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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2025-000269

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

In the matter between:

P[...]: R[...] D[...]

First Applicant

(Identity number: 7[...])

P[...]: K[...]

Second Applicant

(Identity number: 6[...])

L[...]: K[...]

Third Applicant

(Identity number: 0[...])

and

F[...]: T[...]

Respondent

(NEE P[...])

In re:

The minor child, TYP

JUDGMENT

ABRO AJ

Summary

Attorney – Duty of - Whether it is appropriate for an attorney whose mandate has not been terminated and who has not ceased to act for his/her clients in accordance with the provisions of Rule 16(4)(a) not to return to court in order to conclude the matter. Attorneys have a duty to withdraw from a matter by means of delivery of a formal notice of withdrawal as attorney of record in terms of the rule. This duty is owed, not only to the attorney's own client/s, but also to the Court, to the attorneys on the other side and the other litigants in the matter. An attorney who does not do so to continue to act in the matter. Failure to do so out of self-interest constitutes unprofessional conduct.

Introduction

[1] This judgment deals with the reasons for the order granted by me on Friday morning, 31 January 2025, in an urgent application. The following order was handed down –

- “1. The application is postponed sine die.*
- 2. The applicant's attorney, Ms C Von Ludwig, is to provide the court with reasons as to why her conduct and non-appearance in court on Friday morning 31 January 2025 at 09h30 should not be referred to the Legal Practice Council.”*

[2] The applicants (first, second and third) were represented by attorney Ms C von Ludwig. Ms Von Ludwig did not brief counsel and appeared before me to argue the matter on behalf of the applicants in open court on Tuesday 21 January 2025 at

14h00. Ms von Ludwig filed a practice note and heads of argument wherein she indicated that she would be appearing for the applicants.

[3] The respondent was initially unrepresented but delivered a 'responding affidavit' and heads of argument. A replying affidavit was delivered.

[4] At the commencement of the hearing on 21 January as aforesaid, Ms Taylor briefed by Candice Mahlare of Mahlare Attorneys Inc. appeared for the respondent. Ms Taylor handed up a copy of her brief to attend to the urgent application, on behalf of the respondent, together with other documents relating to her instructing attorney and herself.

[5] Ms von Ludwig and Ms Taylor both made submissions on the merits of their respective clients claims and opposition thereto.

[6] It became apparent during argument that there was a prospect of settlement being reached between the third applicant and the respondent (the biological parents of the minor child) and as such I stood the matter down briefly in order for the parties to ascertain if this was possible.

[7] When the proceedings resumed, I was informed that the third applicant and the respondent had indeed reached agreement and that an order could be made in this regard. This was confirmed by the legal representatives for both parties.

[8] The legal representatives before me proceeded with their respective submissions in respect of the relief sought by the first and second applicants. Ms von Ludwig requested that the matter stand down again for a short period in order to ascertain whether agreement between the first and second applicants and the respondent could be reached. The matter was again stood down for 10 -15 minutes.

[9] When the proceedings again resumed, I was informed that the first and second applicants had reached agreement with the respondent. Ms von Ludwig then enquired if the matter could stand down further in order for the parties to attempt to flesh out a more comprehensive order.

[10] I acceded to the request and advised the parties that as I was sitting in the Family Court for a period of two weeks and until Friday 31 January 2025, they could approach me with their proposed draft order later in the week or at the very latest by Friday 31 January at 09h30. I further advised that I would provide the parties' respective legal representatives with a proposed order wherein the so far agreed to provisions would be recorded.

[11] I informed the parties that they could either return to my court on Friday morning 31 January as aforesaid or provide my secretary with their proposed draft order in which scenario they would not need to return to court.

[12] Accordingly, the matter stood down for an order until Friday 31 January at 09h30.

[13] The parties' legal representatives were provided with the 'proposed court order' on Wednesday 22 January at 09:25.

Sequence of events subsequent to the matter standing down on 21 January

[14] My secretary enquired from the parties' respective legal representatives on Tuesday 28 January at 10:06 whether or not they would be attending court on the morning of Friday 31 January or whether a draft order would be provided.

[15] Ms Taylor, in response thereto advised that she had been informed by the respondent that she would appear before me and make representations. Ms von Ludwig advised that she would be appearing on behalf of all three applicants.

[16] Email correspondence addressed by Ms von Ludwig was received the next morning, Wednesday 29 January at 11:51, which email reads as follows -

"Dear Ndalamo,

Please convey my greetings and respects to Abro AJ and advise, with apologies and respect, that I will not in fact be attending Court on behalf of the Applicants on Friday.

They do not have the funds to retain me.

First Applicant is in turmoil so I have, pro bono, prepared some notes, based on what she has communicated to me, to help her make submissions to the Court.

It is not for me to attempt to make submissions via email, but it appears that a referral to the Family Advocate is required for all 3 Applicants and I hope the Court will be so inclined.

I will do as much as I can to assist these Applicants at no charge, but I cannot attend Court on Friday and trust that, on this basis her Ladyship will excuse me.

The parties now seem to all be unrepresented."

[17] On my instruction my secretary responded to Ms von Ludwig, Ms Taylor copied in, on Wednesday 29 January at 13:43. The following, penned by me, was included in the mail:

"Please advise that Friday morning was not for argument but for finalizing (sic) an order. They were given an indulgence for this and had already reached agreement on certain issues. They have ½ an hour only as I have a matter at 10. Also is she withdrawing. If so she is to provide a notice of withdrawal."

[18] Ms von Ludwig responded on said date by way of email at 2:21pm as follows:

"1. The Applicants are aware the matter was for an Order and that it is not for argument and that only 30 minutes is available, for which Abro AJ is thanked.

2. The parties have been unable to reach agreement as to an Order.

3. As the Applicants understand it this means that the Order as regards the Third Applicant will stand. A copy is attached (as drafted by the Court, with an amendment of the date on which contact began)

4. The draft regarding the First and Second Applicant, which was by consent of the Respondent, is now apparently not accepted by the Respondent who wants to phase out contact for First and Second Applicants as per her draft which is also attached).

5. The First and Second Applicants submit that contact as per the Draft of Abro AJ should continue pending investigation by the Family Advocate and

the matter should be referred to the Family Advocate to determine their contact per s23. Their proposed draft is also attached.

6. *I am not withdrawing as the attorney. I am simply instructed not to represent them in Court on 31 January as they do not have the funds for this and will appear in person.*

7. *I understand that despite also still having an attorney on record and Adv Taylor still apparently on brief, the Respondent also cannot afford representation at Court and will be appearing in person.*

8. *I am very grateful to Abro AJ for entertaining emails to ensure justice is achieved for T and his family. I have done my best not to make submissions or argument by email but simply to explain where the case stands, that there is no Agreement between the Applicants 1 and 2 and Respondent on an Order, that all parties will be in Person at Court, and that the Order remains in the hands of the Upper Guardian per Abro AJ.”*

[19] Notably, I was obviously not prepared to entertain the aforesaid emails or the contents thereof. Despite her protestations to the contrary, Ms von Ludwig was in fact attempting thereby to make submissions and present argument on behalf of the applicants.

[20] Ms Taylor provided me with a document headed ‘Court Order Final Order’ on Thursday 30 January at 14:13 by way of email to my secretary. This document sought to similarly make some sort of submissions as to what had transpired subsequent to the matter standing down on 21 January.

[21] At 21:36 on Thursday 30 January the parties’ respective legal representatives that had appeared before me on 21 January were informed that they were required to appear before me the next morning. The following was specifically recorded in the mail:

“neither attorney has withdrawn, therefore both parties are still legally represented, they are in the middle of the matter and are prejudicing their client.

Counsel is similarly to appear. All remain on brief. I expect to see them at 9 30 am in 11B. I have a matter at 10”

[22] Importantly, a copy of the judgment in *Sayed NO v Road Accident Fund 2021* (3) SA 538 (GP) was attached to the mail in the hope that the legal representatives would have regard thereto and comply with their respective duties to their clients and the court.

[23] Ms Taylor responded on Friday morning 31 January advising that she would be attending court. No response was received from Ms von Ludwig.

Friday morning 31 January

[24] Court resumed on Friday 31 January at 09h30. Ms Taylor was present for the respondent who was also in court. The first, second and third applicants were present in court. Ms von Ludwig did not appear.

[25] Ms Taylor confirmed that her briefing attorney had not withdrawn and that she was still on brief. She apologised for any misunderstandings and advised that she understood her duty and obligation to attend court and finalise the matter no matter what.

[26] I informed Ms Taylor and the third applicant that whilst I was pleased that the third applicant had exercised contact with T over the past weekend, which contact appeared to have been very successful, and further that the third applicant and the respondent were in the process of completing an application to the Family Advocate, I was, in light of the fact that the third applicant remained represented by Ms von Ludwig, who was not present, unable to make any order in this regard.

[27] I similarly informed the first and second applicants, who similarly remained represented by Ms von Ludwig, that I would not hear submissions from them or make any order. I explained that because they were all legally represented by an attorney who had appeared in court on their behalf previously, who was actively involved in the matter and who had not formally withdrawn, I could not in her absence make any order. I explained further that this could lead to issues in the future.

[28] I thus advised all present in court that I had no option but to postpone the matter.

Application of the Rules and the Law

[29] Ms von Ludwig's conduct as aforesaid displayed an unacceptable indifference to her duty to her clients, the respondent and her legal representatives, and not least to the court. She further displayed an unacceptable indifference to what the consequences of her actions may be.

[30] Her conduct, which evidences a gross discourtesy and a neglect of her duty to her clients and the court¹, has prejudiced all concerned.

[31] In failing/refusing to attend court despite my clear and unequivocal directive that she was to be present in court on Friday morning 31 January at 09:30, Ms von Ludwig is in breach of the Legal Practice Counsel's Code of Conduct which provides *inter alia* that –

“An attorney shall –

18.6 be in attendance, or immediately accessible, during a consultation with counsel or an attorney acting as counsel, or at court during the hearing of a matter (other than an unopposed application) in which he or she is the attorney of record, in person or through a partner or employee, being an attorney or a candidate attorney;”

[32] Importantly, Ms von Ludwig was an 'attorney acting as counsel' in this matter. She indicated, in her email correspondence to my secretary that she was not withdrawing as the attorney but would not be attending court as she may/would not receive payment for such appearance. I did not excuse her from attending at court nor would I have.

¹ The failure by attorneys to properly comply with this duty has been described in a number of reported judgments as a 'gross discourtesy and a neglect of their duties as officers of the court'. See *S v Ndimma* 1977 (3) SA 1095 (N) at 1097B – D and *MacDonald t/a Happy Days Cafe v Neethling* 1990 (4) SA 30 (N), referred to with approval in *Makuwa v Poslson* 2007 (3) SA 84 (T) para 11, and *Transorient Freight Transporters Corporation v Eurocargo Co-ordinators (Pty) Ltd* 1984 (3) SA 542 (W) at 546B.

[33] In *Sayed* above referred (and provided to the parties' legal representatives as above) Mahon AJ said the following in respect of several Road Accident Fund matters that came before him and where there was no appearance for the defendants despite the defendants' attorneys having formally remained on record –

“[7] In the handling of any matter which comes or is to come before any court, an attorney must at all times act with proper respect for that court so as not in any way to impair its authority and dignity.

[8] An attorney of record in litigation is no mere postbox or conduit for the receipt and dispatch of documents. He plays a pivotal role in the progress of litigation, the functioning of courts and the administration of justice. The attorney's function is to understand his client's problem and, even where he knows that counsel will be briefed, to go as far as he reasonably can in the time available not only to grasp the facts, but also to investigate the legal questions involved. It goes without saying that these duties cannot be fulfilled where the attorney has washed his hands of the matter and is present in name only.

[9] It must be remembered that an attorney owes duties not only to his client, but also to the court and, indeed, to his opponents and their clients.

[10] It is for good reason, therefore, that an attorney's role in the representation of his client in litigation has been regulated by the Uniform Rules of Court.

[11] The relevant provisions of rule 16 provide as follows:

'(1) If an attorney acts on behalf of any party in any proceedings, such attorney shall notify all other parties of this fact and shall supply an address where documents in the proceedings may be served.

(2) (a) Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act, and may thereafter act in person or appoint another attorney to act in the proceedings, whereupon such party or the newly appointed attorney on behalf of such party shall forthwith give notice to the registrar and to all other parties of the termination of the former attorney's authority, and if such party has appointed a further attorney to act in the proceedings, such party or the newly

appointed attorney on behalf of such party shall give the name and address of the attorney so appointed.

. . .

(4)(a) Where an attorney acting in any proceedings for a party ceases so to act, such attorney shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom such attorney acted may be given by facsimile or electronic mail in accordance with the provisions of Rule 4A. . . .'

[12] The above-quoted provisions make it plain that an attorney, when acting for a litigant, is required to place himself on record in accordance with the rule. Axiomatically, where that attorney ceases to act in the matter, he is similarly duty-bound to deliver a notice of withdrawal as attorney of record.

[13] This serves an important purpose, not only for the other parties involved but also for the protection of the attorney himself, as this judgment illustrates."

[34] Whatever Ms von Ludwig's reasons for remaining on record may be, this is the position she adopted. In the circumstances she was obliged to continue to fulfil her obligations. She cannot both approbate and reprobate as was aptly stated by Didcott J in *S v Ndima* 1977 (3) Sa 1095 (N)² –

"If an attorney wishes to carry on hoping that at the last minute he will be given funds and does not wish to withdraw at an earlier stage of the case because he will jeopardise his chance of being paid, then he must be willing to take the risk that he will find himself financing the appeal and go on with it. In other words, he either withdraws at an appropriate stage or he takes the risk and carries on and does the work."

[35] The matter had been argued on 21 January and was to be finalised on or before Friday 31 January. In the circumstances, it seems to me that Ms von Ludwig was required to continue to act in the matter even if this was to be at a financial risk to herself.

²² At 1097 B-C

Conclusion

[36] In the circumstances and as a consequence of the fact that the first, second and third applicants, who were all present in court on the morning of Friday 31 January, remained represented by Ms von Ludwig, I could not hear submissions from them as if they were unrepresented. They were not.

[37] Had I done so, this could lead to all types of untenable situations in the future, like for example an application for rescission.

[38] Ms von Ludwig's assumption that I would allow her clients to make submissions to me in her absence and which she, on her own version, had assisted them with, was presumptuous to say the least.

[39] In the circumstances and in the face of Ms von Ludwig's failure/refusal to appear before me as the applicant's attorney acting as counsel, I was left with no option but to postpone the matter.

[40] Ms von Ludwig's actions appear to be deliberate and at odds with her ethical duties and it would appear, an effort to preserve her own financial self-interest. Her conduct in my view renders her guilty of unprofessional conduct. In the premises and as per the order she has been invited to provide reasons as to why she should not be reported to the Legal Practice Council.

M ABRO
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the applicants on 21 January 2025:

Mrs C von Ludwig

For the applicants on 31 January 2025:

No appearance

For the respondent on both days:

M Taylor

Instructed by:

Mahlare Attorneys Inc