



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Reportable/Not Reportable

Case no: D3067/2024

In the matter between:

NDABENHLE ZULU

APPLICANT

and

**JOANNE PHILIP
LEGAL PRACTICE COUNCIL (KZN)**

**FIRST RESPONDENT
SECOND RESPONDENT**

This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand down is deemed to be on 25 February 2025 at 15:30

JUDGMENT

CHETTY J

[1] The applicant, Mr Ndabenhle Zulu, who appeared in person, brought an application in which he seeks relief in terms of section 44 of the Legal Practice Act 28 of 2014 (the LPA) for this court to order the removal of the name of Ms Joanne Philip (Ms Philip), the first respondent, an attorney who practises under the name and style

of J Philip Attorneys, from the roll of legal practitioners in South Africa. The applicant further seeks that the second respondent, being the Legal Practice Council (KwaZulu-Natal) (KZN LPC), be directed in terms of section 31(1) of the LPA to remove the name of Ms Philip from the roll of legal practitioners. Put differently, the applicant, in his personal capacity, seeks to have Ms Philip struck from the roll as a practising attorney. The applicant's challenge also centres around the contention that the KZN LPC's investigation process was procedurally flawed. Ms Philip, conversely, maintains that the application is premature and that this court should not in any event entertain these proceedings as the claims are spurious and have already been dismissed by the KZN LPC, and the appeal courts have already dismissed his arguments arising from the proceedings in the Commission for Conciliation, Mediation and Arbitration (CCMA) as having no prospects of success.

[2] In light of the relief sought by the applicant, it bears noting that the primary issue in an application to strike off is whether the practitioner is a fit and proper person to remain on the roll of legal practitioners. Where a court finds the practitioner to be dishonest, there must be exceptional circumstances before a court will order the suspension, as opposed to the removal of the practitioner. In *Malan and another v Law Society, Northern Provinces*¹ Harms ADP noted that:

'Obviously, if a court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal. Where dishonesty has not been established the position is . . . that a court has to exercise a discretion within the parameters of the facts of the case without any preordained limitations.'

[3] The background facts leading to the application are relevant. The applicant was a former employee of the University of Zululand (the University). He declared an unfair labour practice against his former employer, resulting in the matter proceeding before the CCMA. At the arbitration the University was legally represented by Ms Philip. The commissioner ruled in favour of the employer. The university sought to have certain aspects of the order varied. It transpired that the commissioner did so *mero moto*. The decision of the commissioner was taken on review by the applicant to the Labour Court. At the Labour Court, the applicant contended that Ms Philip deposed to an

¹ *Malan and another v Law Society, Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) para 10.

affidavit in which she had made statements which were untrue. Essentially, the applicant accuses Ms Philip of having engaged in unprofessional conduct in that she lied under oath. It transpired that Ms Philip had wrongly identified the commissioner who had varied the award. It is in this regard that the applicant submitted that she had lied under oath.

[4] The second complaint concerns Ms Philip having deposed to an affidavit on behalf of her client, the University, in respect of proceedings brought by the applicant in the Labour Court. The applicant contends that Ms Philip was unethical in deposing to an affidavit on behalf of her client and that the affidavit ought to have been deposed to and signed by the client. The applicant further alleges that Ms Philip's independence, as an attorney, had been compromised because she was a co-director with Mr Heinrich Bohmke at Specialised Skills Institute. Mr Bohmke was the evidence leader at the applicant's disciplinary hearing. The arbitration ruling was taken on review to the Labour Court, with Ms Philip still representing the University. The applicant contends that this is improper and constitutes misconduct. Ms Philip, it was submitted, brought the legal profession into disrepute and failed to act with professional independence as an attorney. It is on these grounds that the applicant contends that Ms Philip is not a fit and proper person to remain on the roll of attorneys. The applicant, apart from pursuing a review in the Labour Court where he failed, thereafter petitioned the Labour Appeal Court, and the Constitutional Court. All these applications came to naught.

[5] In the result, the primary basis for the opposition to this application is that having failed in his legal proceedings against the University, the applicant has now taken aim at Ms Philip, seeking her removal from the roll. She denies any suggestion of impropriety in her conduct as an attorney representing the University, or that there was any conflict of interest in her working relationship with Mr Bohmke. She submits that the application bears the hallmark of a disgruntled litigant.

[6] Against this backdrop, the applicant filed a complaint of unprofessional conduct with the KZN LPC on 23 September 2023. The complaint was referred to Ms Philip for her response by not later than 20 November 2023. According to the applicant, despite the due date for Ms Philip to have responded to his complaint having passed, he had

still not heard from the KZN LPC. He wrote to the KZN LPC on 21 February 2024 enquiring whether Ms Philip had replied. It was then brought to his attention that a letter dated 28 November 2023 had been dispatched from the KZN LPC to him, requesting his response to Ms Philip's reply by 8 January 2024. A further letter was written to the applicant on 15 February 2024, care of his nominated address for service, informing him that he failed to file a reply to Ms Philip's answer and that the matter would be referred to the KZN LPC's Investigating Committee for consideration without the benefit of this response.

[7] Despite the applicant's contention of the KZN LPC being complicit in its silence or failing to respond to him, at the hearing of the matter counsel who appeared on behalf of the KZN LPC, produced an email dated 21 February 2024 in which the KZN LPC furnished the applicant with Ms Philip's response, which it also avers was previously sent to him. Despite the due date for a reply from the applicant having passed in January 2024, the KZN LPC nonetheless inquired from him whether he intended to file any comments to Ms Philip's response. Although he did not disclose the email in his founding affidavit, there was no suggestion from him that he was unaware of this correspondence. Notwithstanding this correspondence, no response was received from the applicant.

[8] The KZN LPC subsequently informed the applicant on 22 April 2024 that the Investigating Committee dismissed the complaint against Ms Philip on 5 April 2024. Of particular importance is the fact that the applicant was informed that in the event of him being dissatisfied with the decision, or the manner in which the Investigating Committee conducted its investigation, he was entitled in terms of section 41 of the LPA to lodge an appeal with an appeals tribunal within 30 days of the date of the KZN LPC's letter.² The letter of 22 April 2024 was sent to the applicant at the email address provided by him.

² Section 41(1) provides as follows:

'Appeal against conduct or finding of disciplinary committee.—

- (1)(a) Subject to section 44, a legal practitioner, candidate legal practitioner or juristic entity may, as determined in the rules and within 30 days of being informed of the decision by a disciplinary committee, lodge an appeal with an appeal tribunal established in terms of subsection (2) against a finding of misconduct by the disciplinary committee or against the sanction imposed, or both.
- (b) A complainant who is aggrieved by—

[9] It is not in dispute that the applicant failed to resort to the procedures set out in section 41 of the LPA. The issue arises whether, in terms of the LPA, the applicant is entitled to directly challenge the Investigating Committee's findings, without exhausting other avenues, such as an internal review, which is expressly provided for in the LPA. This question touches on the nature of the court's jurisdiction in matters concerning the legal profession where a member of the public imputes dishonesty and impropriety to a practitioner.

[10] As set out earlier, the applicant challenges both the procedural and substantive findings of the Investigating Committee. At a procedural level, the court must consider whether the Investigating Committee's process or procedures were conducted in accordance with the principles of fairness and administrative justice, and whether the outcome, in this case the dismissal of the complaint, can stand in light of these principles.

[11] It bears noting that the applicant was unable to explain why he had not received letters written to him at his nominated address, nor why he failed to respond timeously to the emails sent to him by the KZN LPC requesting his response to the answer filed by Ms Philip. The invitation extended to the applicant to file a response to the Investigating Committee is critical in weighing up his assertion that the Investigating Committee carried out a 'tainted' and 'unfair process' in arriving at the conclusion to dismiss his complaint. He also complains of the premature finalisation of the report of the Investigating Committee, and that it did so in the absence of a response from him. Such a complaint has no foundation in as much as the KZN LPC was even prepared to consider a late response from him prior to the Investigating Committee finalising its report. The applicant's contention that the deadline for him to file a response was not even extended by the KZN LPC rings hollow in light of the letter of 15 February 2024. He further contends that in the absence of his reply, the Investigating Committee could

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- (i) the manner in which an investigating committee conducted its investigation or the outcome of the investigating committee as referred to in section 37(3)(b); or
 - (ii) the outcome of a disciplinary hearing referred to in section 40, may, as determined in the rules and within 30 days of being informed of the decision by the investigating committee or the disciplinary committee, as the case may be, lodge an appeal with an appeal tribunal established in terms of subsection (2) against any conduct or finding of the investigating committee or disciplinary committee, as the case may be.' (My underlining.)

have drawn the conclusion that he was 'not serious about the complaint', and that the applicant's case was a 'watered down case'. Again, these assertions are based on speculation. On the contrary, the Investigating Committee prepared a written report accounting for the reasons why it dismissed his complaint. The applicant has pointed to no procedural faults in the handling of his complaint by the Investigating Committee and his contention that the matter was 'cleverly engineered' for Ms Philip to be exonerated by the Investigating Committee, is, in my view, without justification.

[12] The applicant was afforded an opportunity (even though he was out of time) to provide a response to the Investigating Committee before it concluded its report. He did not avail himself of the opportunity, with the result that the matter was finalised without the benefit of a reply from him. There is nothing untoward in the Investigating Committee proceeding to finalise its report without waiting any further for the applicant. He only has himself to blame. He cannot delay the process in which both he and Ms Philip are entitled to an expeditious outcome. Would he have complained if the outcome was in his favour? I think not.

[13] I now turn to consider in further detail the import of section 41, which in my view, informs the avenue for a challenge set out by the legislature both in respect of the process and outcome of a dispute. The section contemplates an *appeal* to an internal tribunal set up by the Legal Practice Council (LPC). Ms Philip contends that this application is premature as the applicant is not entitled to challenge her conduct in these proceedings, as he is obliged to follow the procedure under section 41(2) in order to exhaust internal remedies before approaching the court. The applicant, on the other hand, submits that the application is properly before the court and draws on the wording of section 44(1) and (2) in justification for his position. The relevant section reads as follows:

'44. Powers of High Court.—

- (1) The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.
- (2) Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate

legal practitioner or juristic entity or in connection with any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.' (My underlying.)

[14] The applicant contends that notwithstanding the provisions of section 41(2), which provides for internal remedies, there is nothing that precludes him from applying to this court directly, in matters concerning the conduct of a legal practitioner. Similarly, in so far as the provisions of section 44(2) are concerned, the applicant contends that this section permits a layperson, such as himself, to approach the court directly if he is dissatisfied with the decision of a disciplinary body or the LPC. At face value, if the applicant is correct in his interpretation, the entire complaints mechanism established to enable members of the public to lay complaints with the LPC stemming from the conduct of practitioners, will become obsolete, as will the entire edifice of the LPC's investigation arm into complaints.³

[15] The issue that arises is in what circumstances can a court intervene in the LPC's ongoing investigative process, given that this application was instituted when the LPC's decision had not been finalised. In other words, when will a court entertain an application *directly* from a member of the public, as opposed to the traditional route of an application for a strike off being brought by the LPC, which statutorily regulates the profession? I accept that in the context of this matter the applicant may have grown frustrated at not having received certain correspondence from the KZN LPC leading to delays. However, he has not attributed his direct approach to this court to any such factors. He contends that his right of 'direct access' is emboldened by the provisions of section 44, which entrench his right to approach the court directly.

[16] Ms Philip maintains that the application is premature and submits that it is 'inappropriate for a layman to bring an application to strike off the name of [a] legal practitioner from the roll when the Legal Practice Council has ruled that the legal practitioner's conduct does not warrant misconduct proceedings...'. Ms Philip went on

³ The principles applicable to statutory interpretation are trite. Regard must be had to the text, context and purpose of the provision, and its location in the Constitution. In addition, regard must be had to the historical context within which the provision was enacted may be relevant to the process of interpretation. See *Cool Ideas 1186 CC v Hubbard and another* [2014] ZACC 16; 2014 (4) SA 474 (CC) para 28, followed in *Hutchinson Wild v Legal Practice Council and others* [2024] ZASCA 180 para 20.

to add in her supplementary affidavit that the application is an abuse of the court process and is frivolous and vexatious. The applicant's response was to contend that his case is not based on the findings of KZN LPC regarding the complaint against Ms Philip. He asks the court to look at the allegations against Ms Philip and make a determination on whether such conduct amounts to a breach of the Code of Conduct for legal practitioners and to make an appropriate order. He adds in his replying affidavit that

'This application was *never* based on the findings of the legal practice council. It is based on the inappropriate and unlawful manner in which the Legal Practice Council conducted itself when dealing with the complaint. Thus to challenge this application on the basis of the findings of the council is a deviation from the case at hand.'

[17] It is true that the court is also *custos mores* of the legal profession and in appropriate circumstances, it has a duty to protect the public by suspending or even striking a legal practitioner from the roll. As stated in *South African Legal Practice Council v Molati and another*.⁴

'The court will fail dismally in both its constitutional duty and its duty to the public if it, when faced with serious allegations of misconduct committed by an officer of court, turns a blind eye and refuses to entertain the matter.'

[18] The question whether a layman, such as Mr Zulu, has standing to seek the striking off of a practitioner was considered in *Mavudzi and another v Majola and others (Mavudzi)*⁵ in which the Full Bench, comprising Sutherland DJP and Molahlehi J, said the following in relation to role of the LPC in such matters :

'It is an extraordinary occurrence that laymen bring an application for the striking-off of a legal practitioner. There is no known precedent for such action drawn to our attention...'

[19] Not unlike the matter before me, Mr Mavudzi relied on the provisions of section 44(1) and (2) as the basis for him bringing his application to strike off Mr Majola, the prosecutor in a long running trial against him. He reported Mr Majola to the LPC before launching proceedings to strike him off following comments made by a judge in an application in which Mr Mavudzi sought to challenge the search warrants which were

⁴ *South African Legal Practice Council v Molati and another* [2023] ZAGPPHC 578 para 14.

⁵ *Mavudzi and another v Majola and others* 2022 (6) SA 420 (GJ) para 29.

obtained by Mr Majola, pursuant to an application to a magistrate in terms of section 43(1) of the Criminal Procedure Act 51 of 1977. The judge made comments critical about Mr Majola's conduct, which gave rise to the complaint against him. In analysing Mr Mavudzi's status to bring the application, Sutherland DJP confirmed that the LPC is the 'primary regulator' of the legal profession and is vested with the power to discipline errant practitioners.⁶ An intrinsic part of the disciplinary process would be the investigation of complainants.

[20] In *Mavudzi*, the court noted further that word 'complainant' as used in section 44(2) of the LPA could only refer to someone who had lodged a complaint against a practitioner and 'moreover, had exhausted the LPA process'. This is at odds with the position in the present application, where the applicant elected not to pursue the internal appeal processes available to him. In respect of incomplete investigations, the court noted that 'once having lodged the complaint, it would be senseless to contemplate parallel contemporaneous proceedings before a court by that complainant whilst the LPC remained engaged in the investigation and was yet to reach a conclusion'.⁷ If the complaint was still 'being addressed' before the LPC, in a sense that not all the process mechanisms under the LPA had been exhausted, an application to court, in my view, would be premature, unless the applicant is able to point to factors which indicate an overwhelming loss of confidence in the processes followed by the LPC, to the extent that he or she would have no confidence in their impartiality or independence to protect the public.⁸

⁶ Ibid para 34.

⁷ Ibid para 35.

⁸ See *Johannesburg Society of Advocates and another v Nthai and others* [2020] ZASCA 171; 2021 (2) SA 343 (SCA) (*Nthai*) which dealt with an application for re-admission of an advocate and the role of constituent Bar Councils to bring proceedings as *custos morum* (the guardian of good morals) of the profession. It was accepted in para 24 that 'the LPA makes the LPC primarily responsible for the protection and regulation of the legal profession' but it was added that:

'... whilst the LPA confers primary jurisdiction for the discipline of legal practitioners on the LPC The LPA requires the LPC to establish disciplinary bodies tasked with evaluating complaints about professional conduct. And, it empowers the LPC to punish errant practitioners, including by approaching the High Court for their removal from the roll.' (Footnote omitted.)

It bears noting that in *Nthai* and in *Wild v Legal Practice Council and others* 2023 (5) SA 612 (GP), while consideration was given to whether the LPC had the exclusive role of *custos morum* of the profession to bring strike off applications, neither court considered the position of whether it was competent for a layperson to, ab initio, launch such proceedings, especially where the practitioner had been cleared of any wrongdoing by the LPC. In *Nthai* para 24 the court expressly stated that that 'whilst the LPA confers *primary jurisdiction* for the discipline of legal practitioners on the LPC, this does not deprive existing bodies from having a continuing interest in the professional ethics of the

[21] This has certainly not been the case in terms of the facts before me, entitling this court to grant 'appropriate relief' to the applicant, in the widest sense, contemplated in section 44(2). If the applicant believed that the KZN LPC was remiss or delinquent in not fulfilling its statutory obligations, or dragging its feet in adjudicating the complaint, his option would have been to approach the court for a *mandamus*. Accordingly, in such circumstances, it is not appropriate for the applicant, as a layperson, to approach the court *ab initio* for the striking-off of Ms Philip as an attorney. This status can only be accorded to the LPC in the circumstances. This is so because the LPC, as the regulatory body for legal practitioners, has a clear statutory mandate to protect the public interest and maintain appropriate standards of professional conduct. This mandate includes the power to investigate complaints against legal practitioners and to defend its processes in court.

[22] In light of what I have set out above, applications to strike off practitioners do not constitute ordinary civil proceedings but are *sui generis* in nature.⁹ In practice, the LPC, as *custos morum* of the profession, places the facts and its views concerning its officer before the court for consideration. The resultant hearing is an inquiry conducted by the court into the practitioner's fitness to remain on the roll of legal practitioners.¹⁰ The LPC fulfils the role of an *amicus curiae*¹¹ and there is no *lis* between the LPC and the practitioner concerned. The appropriate sanction, whether a suspension from practice or striking from the roll, lies solely within the discretion of the court, which

profession or standing'. No mention is made of an individual person having the capacity to bring an application seeking the striking off of a practitioner. More recently, the SCA in *Hutchinson Wild v Legal Practice Council and Others* [2024] ZASCA 180 para 29 said:

'Instead, s 44(2) of the LPA confirms and affords rights to any person who has *locus standi* to apply to the high court "for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner..."'

This statement appears to suggest that *any person* who can claim *locus standi* in terms of section 44(2), which includes a complainant, can bring an application for appropriate relief. A distinguishing feature may be that the court in *Wild*, as in *Johannesburg Society of Advocates and another v Nthai and others* (supra) did not deal with the situation where a layperson brought such an application, but rather focused solely on the traditional authorities who were always tasked with upholding the professional integrity of practitioners. The implications of extending the right to apply for the striking off of a legal practitioner to *any person* was not addressed by the SCA, especially as this would imply a major shift from the position that prevailed under the Attorneys Act 53 of 1979 or the Admission of Advocates Act 74 of 1964 which effectively precluded a layperson bringing such an application.

⁹ *Cirota and another v Law Society, Transvaal* 1979 (1) SA 172 (A) at 187H.

¹⁰ *Law Society of the Northern Provinces v Le Roux* 2012 (4) SA 500 (GNP) at 502E-F.

¹¹ *Ibid.*

considers the facts in their totality.¹² Although the court is not bound by it, the opinion or views of the LPC that a practitioner is no longer a fit and proper person to practise as an attorney carries great weight with the court.¹³

[23] A layperson, particularly one who was a complainant before the LPC, can hardly claim to occupy the position of an *amicus*. He is driven by self-interest to ensure that his position is vindicated. The applicant, in my view, approaches the court in exactly this mould. I am not suggesting that he does so without complete honesty and integrity. The point of divergence is that he does so from a position of self-interest. As stated earlier, this is not an instance where this court is faced with serious allegations of misconduct attributed to an attorney. On the other hand, the court is faced with a situation where the attorney has been exonerated of any wrongdoing by the regulatory body entrusted to govern the profession. If the court were to entertain an application of this nature, it would be second guessing a role entrusted by the legislature to the LPC. Lastly, when faced with this dilemma as to his standing, the applicant contended that the conclusion in *Mavudzi* was contrary to his constitutional right to be treated equally before the law. He was unable to point to any right that is violated in circumstances where the LPC is vested with authority to bring applications to strike off an errant practitioner.

[24] For these reasons, I agree with Ms Philip that the present application is premature. I would accordingly dismiss the application.

[25] I now turn to consider whether this matter has been brought in the correct forum. The applicant opted to bring his application in the Kwazulu-Natal Division, Durban and set the matter down for hearing on the opposed motion court roll. As such, it served before a single judge. It bears noting that in *Mavudzi*, the matter came before a Full Bench. Directive 24 of the Practice Manual in this Division provides for the following: 'Applications for Striking off of Practitioners in Pietermaritzburg

¹² *Law Society, Cape v Segall* 1975 (1) SA 95 (C) at 99B; *Beyers v Pretoria Balieraad* 1966 (2) SA 593 (A) at 606B.

¹³ *Kaplan v Incorporated Law Society, Transvaal* 1981 (2) SA 762 (T) at 781H; *Die Prokureursorde van die Oranje-Vrystaat v Schoeman* 1977 (4) SA 588 (O) at 603A-B.

The practice in applications to strike the names of practitioners from the roll is for a single judge to grant the *rule nisi* even if it involves interim relief such as suspension from practice and the appointment of a *curator bonis*. On the return day the matter is dealt with by two judges opposed or unopposed.'

[26] The point of departure from the Practice Manual is that the applicant has brought this matter in the Local Division, Durban, rather than the Provincial Division, Pietermaritzburg. There is no prayer in the notice of motion for a *rule nisi*, and the applicant proceeded for final relief before a single judge. I should point out, in fairness to the applicant, that the point regarding the application being brought in the wrong division as directed in the Practice Manual was also missed by Ms Philip's counsel, until I raised it. However, an oversight by both parties is not enough to rescue the application. On this basis alone, the application falls to be dismissed.

[27] In light of my finding that the application should be dismissed, it remains to determine whether costs should be granted against the applicant, as contended for by Ms Philip. Counsel for Ms Philip contends that the applicant was economical with the truth in that in his founding affidavit he states that the KZN LPC wrote to him on 15 February 2024 informing him that he had not responded to Ms Philip's reply. He conveys the impression that the Investigating Committee finalised the complaint without giving him an opportunity to respond and violated his *audi alteram partem* rights. It was, however, pointed out that the KZN LPC emailed him on 21 February 2024, attaching Ms Philip's reply, and enquired whether he intended filing a response. Yet he made no mention of the email of 21 February 2024 until it was disclosed to court by counsel for the KZN LPC. It is in this context that Ms Philip submits that it does not behove the applicant to liberally cast aspersions on the KZN LPC, members of the Investigating Committee who dismissed his complaint, and herself, and not to be accountable for costs when his application falls to be dismissed.

[28] It is trite that I have a discretion in matters regarding costs, and generally the courts are hesitant to award costs against lay litigants. In this case, Mr Zulu appeared clearly *au fait* with the legislative provisions of the LPA and forcefully argued that I should not follow *Mavudzi*, particularly in its stance that a layperson has no standing to bring a strike off application.

[29] He appeared well-versed in the law, which was either due to his own research and acumen, or he had the benefit of legal assistance and advice. In either event, he was forewarned by Ms Philip of her reliance on *Mavudzi* and nonetheless persisted with his application. Apart from making allegations against Ms Philip, which she considered scurrilous, Mr Zulu also asserted that the outcome of the investigation into his complaint was contrived. This is a serious allegation, as it imputes an element of corruption and dishonesty to those charged with the task of investigating their fellow legal practitioners. His allegations remain totally unfounded. Counsel submitted that the applicant was purely vindictive in bringing the application against the practitioner, who had done nothing untoward in defence of her client, the former employer of the applicant. For these reasons, Ms Philip seeks a punitive order for costs. The KZN LPC appeared at the last minute, following a directive issued by me, in order to fully appraise the court of the background to the matter. They did so as an *amicus* and no costs should follow their involvement.

[30] I find much merit in the argument of Ms Philip as to why costs should be granted. However, in the exercise of my discretion, I am satisfied that costs should follow the result, and that punitive costs may be construed as being too harsh on a lay litigant, even one in the position of the applicant. I am satisfied that costs on a party and party scale would be fair and just.

[31] I make the following order :

1. The application is dismissed.
2. The applicant is directed to pay the first respondent's costs on a party and party scale, inclusive of all adjournments, and counsel's fees.


CHETTY J

Appearances

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