



**THE REPUBLIC OF SOUTH AFRICA**

**REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA  
[WESTERN CAPE DIVISION, CAPE TOWN]**

**CASE NO: 5029/2024**

*Before **ALLIE, J et FORTUIN, J***

*Hearing: **17 March 2025***

*Judgment Delivered: **2 May 2025***

In the matter between:

**NONOZA POTELWA**

Applicant

and

**SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

1<sup>st</sup> Respondent

**WESTERN CAPE PROVINCIAL COUNCIL**

2<sup>nd</sup> Respondent

**TIMOTHY COLIN GEOFFREYS**

3<sup>rd</sup> Respondent

**MARISKA SHRIVES**

4<sup>th</sup> Respondent

**CHARLENE LEE-ANN SNELL**

5<sup>th</sup> Respondent

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**JUDGMENT ELECTRONICALLY DELIVERED ON 2 MAY 2025**

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**ALLIE, J:**

1. This is an application to review and set aside the decision of the Disciplinary Committee [ “the DC”] of the South African Legal Practice Council, Western Cape Provincial Council [ the “LPC”] made at an inquiry held on 1 December 2023.
2. A counter application was brought by the LPC to have the name of the applicant struck from the roll of legal practitioners, but that counter application has been withdrawn. The issue of the costs of that counter application is what this court has to determine.
3. There is also an application brought by the LPC for leave to file a further affidavit relating to the main application.
4. The LPC initially filed a note to abide by the decision in respect of Part A where the following relief was sought:

“1. *Condoning the applicant’s non-compliance with the Uniform Rules of Court and the Practice Directions of this Honourable Court pertaining to time periods and service of documents and that the relief sought in **Part A** of this notice of motion be dealt with as an urgent application.*

2. *Suspending the implementation of the decision taken by the Disciplinary Committee comprising of: Mr Timonthy Colin Geoffreys, Mrs. Mariska Shrives, and Ms. Charlene Lee-Ann Snell (**“Disciplinary Committee”**) on 13 December 2023, under the auspices of the Western Cape Provincial Council*

*(“**Provincial Council**”) and published by the South African Legal Practice Council (**“LPC**”) on its Website, in terms of section 38(3)(d)(i) of the Legal Practice Act, 28 of 2014 (**“LPA**”), on an unknown date to the applicant, until such time as the relief sought under **Part B** of this notice of motion is finalized.*

- 3. Interdicting the LPC and the Provincial Council from implementing and/or putting in operation the decision of the Disciplinary Committee, dated 13 December 2023, until such time as the relief sought under Part B of this notice of motion is finalized.*
- 4. Directing the LPC to remove the published decision of the Disciplinary Committee against the applicant from its website, within two (2) days of the granting of this Order, and up until such time as the relief sought under **Part B** of this notice of motion is finalised.*
- 5. Directing the LPC and the Provincial Council and such other respondent(s) who may oppose this application to pay the applicant’s costs of suit, jointly and severally, the one paying the other(s) to be absolved.”*

5. On 14 March 2024, at the hearing of Part A, by agreement between applicant and the respondents, an order was made before Adams, AJ, incorporating the following terms:

- 5.1. The decision of the DC taken on 13 December 2023 and published on the LPC website is suspended pending the final determination of Part B.

- 5.2. The LPC and its Western Cape Provincial Council are interdicted from implementing and/or putting into operation the decision of the DC dated 13 December 2023 until the relief sought in Part B is finally determined.
- 5.3. The LPC shall remove from its website the decision of the DC within 2 days of the order.
- 5.4. No order as to costs.
6. The LPC was not prevented from challenging the above order. They did not bind itself nor did the court bind it, to not challenge the relief sought in Part B. Therefore, the basis of applicant's suggestion that the counter application is contemptuous is not explained
7. This Court accepts that the LPC's role *vis a vis* the Court pronouncing upon the regularity of its decisions, is a statutory one and that it is duty bound to present information in clarification and support of its decision. In the circumstances, the further affidavit sought to be delivered by the LPC is meant to clarify the position of the chairperson of the DC and was delivered when it could provide the applicant with sufficient time to consider it, therefore its filing and delivery is condoned.
8. The reason that the LPC provides for bringing the counter application, is that it was meant to be a response to the main application.
9. As Applicant's counsel points out, the resolution relied on by the LPC for the authority to bring the counter- application predates the launch of this application. The resolution was passed on 9 March 2024 even though it was signed on 10 July 2024 whereas this application was launched on 12 March 2024 and set down for the hearing of Part A, namely the interdictory relief, on 14 March 2024.
10. No acceptable reasons were offered for bringing the counter-application on 22 July 2024. The applicant responded by serving and filing a Notice in terms of

Rule 30(2) (b) on 29 July 2024, requesting that respondent remove the cause of complaint in that its counter application is an irregular step as contemplated by Rule 30 and also constitutes contempt of court in that the order taken by agreement on 14 March 2024 in this matter provides that the DC's decision of 13 December 2023 is suspended pending the finalization of Part B, namely, this review application. Accordingly, the decision to bring a counter application to strike the applicant's name from roll of legal practitioners it was submitted, amounts to ignoring the suspension of the DC decision.

11. After some debate with counsel for the applicant, it was accepted that the counter-application amounts to a step taken prematurely but since no Rule 30 application was brought by the applicant, this court is not seized with determining whether it is an irregular step. In light of the withdrawal of the counter-application, any premature or contemptuous step has been purged.
12. Nonetheless, the respondent has caused the applicant to draft, file and deliver the Rule 30(2) notice and to prepare argument for the dismissal of the counter-application before the LPC indicated a few days before this hearing, that it would withdraw the counter application. In my view, therefore, the applicant is entitled to the party and party costs occasioned by the late withdrawal of the counter-application.

### **The background facts**

13. The complainant, Babalwa Grace Mbekeni lodged a complaint with the LPC on 17/11/2020 concerning the applicant allegedly having caused her to sign a document on 8 October 2020 relating to a claim that was lodged on behalf of her minor child with the Road Accident Fund ["the RAF"].
14. She alleged that she contacted the RAF who informed her that an amount of R1834003.00 had been paid out on 26 July 2019 in respect of that claim. She alleged that the applicant bought her a Wendy-house, a plate stove and fridge before lockdown in 2020 and applicant allegedly told her that she has to wait 1 year and 9 months for payment of any money.

15. The LPC sent the applicant a copy of the complaint on 22 December 2020 and requested a response and when no response was received, the LPC on 25 February 2021, informed the Applicant that, if no response was received by 8 March 2021 the issue will be referred to the investigating committee.
16. The Applicant filed her response on 12 March 2021. According to Applicant she and her employee consulted with the complainant's sister in January 2016 regarding a claim against the RAF because the complainant's child had been injured in a motor vehicle accident on 20 March 2013 by an unknown driver.
17. The Applicant initially advised the complainant's sister that the claim had prescribed, because the driver was unknown.
18. Applicant however later established that the driver took the injured child to hospital, and she was able to obtain the driver's name and address from the hospital records. Applicant arranged for the driver to report the accident to SAPS. When the applicant lodged the claim with the RAF, the child had recovered from his injuries to such an extent that he reached maximum medical improvement. The applicant arranged for the child to be assessed by medical experts.
19. The mandate was signed by the complainant but the interactions were mostly between the applicant and the complainant's sister. The reason for this was that the complainant's sister alleged that the complainant abused alcohol and neglected the child therefore applicant suggested that the proceeds of settlement of the claim be held in her trust account. According to applicant on 26 July 2019 the capital sum of R1834003.00 was paid. On 25 March 2020 party and party costs of R151132.55 were paid.
20. Due to lockdown, the applicant's staff was only able to contact and consult with the complainant's sister on 26 May 2020. The complainant had no bank account and no identity document. The complainant requested a house for her

and her children, food, clothes and money. Applicant's employee bought groceries to the value of R6638.56 and gave the complainant R2000 in cash.

21. Thereafter the complainant made unreasonable demands for money according to the applicant.
22. Applicant refused to give the complainant any further money because the money was for the benefit of the minor. Applicant appointed a social worker to investigate the domestic circumstances of the minor because complainant's relatives alleged that she squandered money and neglected her children. Therefore. Applicant wanted a social worker's report before transferring money to the complainant.
23. Applicant alleged that it was her intention once she had received the social worker's report, to bring an application for the appointment of a *curator* and would thereafter deposit the funds into a trust registered on behalf of the minor or into guardian's fund. Unfortunately, the social worker met the complainant and her children only once but did not meet with complainant's sister and eldest daughter who are the persons who informed the applicant of the complainant's alleged abuse of alcohol and child neglect.
24. The complainant later withdrew the complaint against the applicant because she went to the office of the applicant who agreed to work with her and assist her in managing the funds.
25. Despite the LPC deciding to *mero motu* investigate the Applicant particularly because the applicant had not at the earliest opportunity applied to have a *curator* appointed for the minor child in circumstances where, clearly, on Applicant's version, at inception, she found the minor's mother intoxicated and not capable of managing the child's finances.
26. On 21 June 2021 the LPC requested a copy of the applicant's statement of account in the matter and what the status of the application for the appointment of a *curator* was

27. Also, on 22 June 2024, the LPC requested a copy of the bank statement of the applicant's trust account for the period from 1 July 2019, which the appellant supplied on 24 June 2021.
28. On 5 July 2021, the LPC furthermore requested a copy of the client's trust ledger.
29. On 6 July 2021 Applicant's employee advised the LPC that applicant was away in the Eastern Cape and would return later in July 2021.
30. On 20 July 2021, applicant advised the LPC that in June 2021, the complainant gave a mandate for her to proceed to instruct counsel to apply for the appointment of a *curator ad litem*. She said that she requested the ledger sheet from her accountant who would only provide it if she settled her outstanding debt with him. Furthermore, she also said that she would prepare the applicant's statement of account when she returned to office.
31. On 21 February 2022, the LPC addressed a follow up letter to the applicant once again seeking the statement of account, the trust ledger and an update on the status of the appointment of a *curator*. The LPC further requested a copy of the court order for the appointment of a *curator* and asked when the funds were paid to the curator and proof thereof. The LPC pointed out that if the funds were invested prior to the *curator's* appointment, then proof of the investment is required. The LPC advised the applicant that a complaint of alleged un-professional conduct would be considered by the investigating committee on 15 March 2022 and her response had to be provided by 8 March 2022.
32. On 8 March 2022, applicant replied to the LPC advising that she was an acting magistrate and has limited time to access her practice.
33. Applicant alleged further that a cost consultant was working on her bill and she confirmed once again that her statement of account would be provided. Her accountant would only release the trust ledger once she paid him. A *curator*

was eventually appointed and the court order was annexed. She undertook to account to the *curator* once the *curator* was appointed by the Master. Applicant also said that she was waiting on the letters of appointment of the *curator* before paying over the funds. Applicant informed the LPC that her magistrate's contract would end on 31 March 2022 and asked for an extension of time to provide the outstanding information.

34. On 19 October 2022, the LPC informed applicant that a complaint of unprofessional conduct was referred to the investigating committee for its consideration. The applicant replied and asked for an extension until 12 November 2022 to file her response to the LPC queries.
35. The LPC wrote to applicant on 9 June 2023 informing her that the Investigating Committee requested an explanation and the grounds for the continued holding of the funds and if she no longer held the funds on what grounds, she held the funds previously. She was asked to respond by 22 June 2023.
36. The LPC informed applicant on 12 September 2023 that the investigating committee considered the matter on 8 September 2023 and directed that it be referred to the DC in terms of Rule 40.5.1.
37. In a letter dated 26 September 2023 the Applicant was summonsed to appear before a disciplinary committee on 12 October 2023 at 09h30 to answer a charge of misconduct in terms of clause 21 of the LPC's Code in that she allegedly breached the following provisions of the Code:
  - 37.1 Provision 3.8 for failing to account faithfully, accurately and timeously to the complainant;
  - 37.2 Provision 3.11 for failing to use her best efforts to attend to the RAF matter in a competent and timely manner in that a *curator bonis* was only appointed in November 2021 despite the funds having been paid to the applicant in 5 July 2019 ;

- 37.3 Provision 3.15 of the code in that she brought the profession into disrepute by misappropriating funds received from RAF on behalf of the complainant's minor child;
- 37.4 Provision 6.2 of the code in that she failed to advise/ provide the LPC with the following information:
- (a) Whether the funds received from the RAF were invested
  - (b) a copy of the final statement of account from the applicant
  - (c) a copy of the trust ledger
38. The LPC, in the aforementioned letter, alerted the applicant to the fact that, in terms of Rule 41, she may be present at the disciplinary hearing and that the committee may proceed to conduct the hearing in her absence if they are satisfied that notice of the hearing had been received by her.
39. However, the hearing was postponed because, on 29 September 2023 the LPC informed her that the disciplinary hearing could not proceed as planned on 12 October 2023 would be heard, instead on 19 October 2023.
40. On 5 October 2023, the LPC sent an email to the applicant and stated that the LPC still did not received an acknowledgement of receipt to their email dated 29 September 2023 in which the hearing date was changed. In the email of 5 October 2023, the LPC requested an urgent acknowledgement of receipt and applicant's staff confirmed applicant's receipt but said that applicant was in the Eastern Cape and would return in that week.
41. On 5 October 2023, Applicant's office secretary sent the LPC an email stating that the LPC's email had been forwarded to applicant's personal email. The office secretary stated that applicant had employed a legal team that would represent her at the disciplinary hearing. That email contains a paragraph raising displeasure at the tone and content of a call from the LPC concerning

applicant's alleged frequent visits to the Eastern Cape which was perceived as disparaging.

42. On 6 October 2023, the LPC clarified in an email that there are not two proposed dates but just one, namely 19 October 2023.
43. On 13 October 2023, the LPC sent the applicant an email attaching a bundle of documents that would be used at the disciplinary hearing on 19 October 2023.
44. On 17 October 2023 Applicant provided a medical certificate from a doctor.
45. On 18 October 2023, the LPC granted a postponement of the disciplinary committee meeting and informed the applicant thereof.
46. On 20 October 2023, the LPC informed the applicant that the disciplinary hearing was postponed to 9 November 2023. The legal officer of the LPC who wrote the email stated that she would object to any further postponements because of the seriousness of the charge.
47. The legal representative of the applicant indicated to the LPC that he is not available to attend the disciplinary committee hearing in 2023 and is available only on 5 February 2024 but on 20 October 2023 the LPC informed the legal representative that the hearing will proceed on 9 November 2023.
48. The legal representative wrote to the LPC on 26 October 2023 stating that he did not seek a postponement, but he requested that a date be set that is mutually suitable for him as well, because the date of 9 November 2023 is a unilaterally set date. The attorney informed the LPC that applicant is ill and will see her doctor on 9/11/2023.
49. On 8 November 2023, the LPC wrote to the applicant's legal representative informing him that a new date had been set for the hearing, namely 21 November 2023.

50. On 14 November 2023 the applicant wrote a letter to the LPC complaining about the conduct of the legal officer, Ms Alexander.
51. On 17 November 2023 a senior legal officer at the LPC one Craig Lucas informed applicant that he required a signed letter of complaint from her.
52. On 23 November 2023 the LPC sent an email to the applicant and her attorney advising that the disciplinary enquiry was to be held on 21 November 2023 and neither the applicant nor her attorney attended the hearing.
53. The DC postponed the matter to 13 December 2023 and said that all correspondence must be sent to the applicant and that applicant should attend the hearing on 13 December 2023 and if her attorney is not available, she should obtain a different legal representative. Applicant was also informed that in the event that applicant persisted with an application for recusal of the legal officer Ms Alexander, another legal officer, will be available to attend the proceedings.
54. On 12 December 2023, the LPC sent an email to applicant and her attorney to remind them that the new date of the DC hearing was 13 December 2023.
55. On 1 March 2024, applicant's attorney wrote to the LPC stating that he was available to attend a hearing in the week of 15 April 2024.
56. On 4 March 2024, the applicant's attorney sent a letter to the LPC national office in which the following allegations are made:
  - 56.1. Applicant is aware that on 13 December 2023 a decision was made by the LPC (WC) ;
  - 56.2. a suitable date for hearing the DC inquiry was never arranged with the applicant's attorney;
  - 56.3. the illness of the applicant was ignored;

56.4. the hearing proceeded despite applicant lodging a complaint against Ms Alexander; and

56.5. the manner of proceedings was alleged to be unfair and therefore a nullity.

57. On 27 March 2024, the LPC informed the applicant of the decision of the DC taken on 13 December 2023 and she was advised of her right to appeal the decision within 30 days from the date of notification of that decision. She was also informed that the council of the LPC had approved the DC's recommendation that proceedings be brought for the striking of applicant's name from the roll of legal practitioners.

### **Applicant's allegations**

58. It is common cause that this application for an interdict in Part A and review in Part B was launched on 12 March 2024, that being some 15 days before the LPC notified the applicant of its DC decision taken already on 13 December 2023, some 14 weeks before the notification.

59. Applicant alleges, and it can't be disputed, that she was informed of the DC's decision by a colleague who saw it posted on the LPC's website.

60. Applicant alleges that the late notification impacted adversely on her right to proceed with an internal appeal because that appeal process was rendered nugatory by the inordinately late notification, which she received after she had already launched these proceedings, by which time, it was clearly too late to bring the internal appeal.

61. The LPC also took a resolution on 9 March 2024, to bring striking proceedings against the applicant, at a time when she had not been notified of the DC's decision of 13 December 2024.

62. According to applicant, the procedure followed at the DC hearing on 13 December 2023 is irregular for the following reasons:

- 62.1. She was not granted a postponement at the hearing despite her having sent her sister to ask for one and despite an attorney from her office accompanying her sister. The DC chair requested a medical certificate from a Western trained medical practitioner and would not have accepted a certificate from a traditional healer, which certificate was subsequently made available to the LPC after the hearing;
- 62.2. The LPC did not afford applicant's attorney a courtesy of a mutually agreeable date for the hearing and unilaterally proceeded to set the hearing down for the 13 December 2023 despite knowing that her attorney was not available;
- 62.3. The Legal Officer, Ms Asia Alexander[ "Alexander"] ought not to have formed part of the DC process in her capacity as *pro forma* prosecutor, as there was an unresolved objection to her on the basis that she displayed bias towards the applicant;
- 62.4. The chairperson of the DC should have recused himself in that he knows the applicant;
- 62.5. The notification of the decisions taken at the hearing was sent to the applicant at a time when it was too late, thereby causing her prejudice with regard to exhausting internal remedies;
- 62.6. The late notification meant that members of the public and the profession saw the decision to strike the applicant on the LPC's website before applicant did and it caused her reputational harm;
- 62.7. The DC failed to call the complainant to testify at the enquiry when clearly her testimony was necessary to establish if funds were paid to her or to the *curator*;

- 62.8. The DC accepted testimony from Alexander in circumstances where she was biased and where her evidence could not be tested;
- 62.9. The chairperson of the DC gave the applicant's sister the impression that the DC would consider her application for a postponement and revert before proceeding but that did not occur. Applicant's attorney would have been in a position to send an attorney to the enquiry if he knew that it would proceed in the absence of the applicant;
- 62.10. The DC chairperson displayed a disregard for the traditional healing process and mental health illness of the applicant by stating that the applicant had applied for postponements on several occasions previously, thereby not accepting that applicant did not willfully absent herself;
- 62.11. The DC enquiry proceeded to consider not only alleged breaches of the applicable Code, but also sanction at the same hearing despite applicant being absent in circumstance where applicant is entitled to have been informed of the findings of guilt on the breaches of the Code and to present facts and argument in mitigation, for the purpose of the sanctions.

### **The Respondents' version**

63. Respondents make the following submissions concerning the allegations of irregularity in the proceedings:
- 63.1. The sister of the applicant did not tell the DC that she had a mandate from the applicant and the attorney that accompanied her, said pointedly that she did not hold a mandate but was merely accompanying applicant's sister to explain applicant's absence to the DC. No request for a postponement was made.

- 63.2. Concerning the fairness in proceeding in the absence of the applicant, it was alleged that the chair went to great lengths to establish when the applicant became aware of her illness and for how long she had been ill because she gave the LPC no prior notification that she would be too ill to attend the enquiry on 13 December 2023 even though she successfully applied for and obtained postponements on previous occasions with the assistance of Western medical certificates.
- 63.3. According to the attorney that accompanied Applicant's sister, she saw the applicant two weeks prior to the hearing and applicant commuted between Eastern Cape and her office in Cape Town over an extended period since end June 2023, already. Applicant was alleged to have represented a client during that period.
- 63.4. The alleged bias of the *pro forma* prosecutor is irrelevant because it is the bias of the administrator, namely the chairperson that is relevant. From the transcript it is clear that the chairperson did extensive questioning of applicant's sister and the attorney present to establish for how long applicant had been ill on that occasion, when her illness was known and why applicant did not notify the DC or the LPC prior to the day of the hearing of her illness or that she was ill to such an extent that she could not be present at the enquiry. Therefore, it was alleged that the facts speak for itself and it is clear that the chairperson was not objectively biased.
- 63.5. No formal application was made for a postponement at the enquiry nor was a medical certificate of any nature produced.
- 63.6. The numerous emails sent by the LPC to the applicant requesting her co-operation in clarifying how the funds were used and what funds were left as well as where the funds were being kept, were reasonable attempts by the LPC to involve the applicant in the process of clarifying whether trust funds were misappropriated or not. Those attempts to obtain a response from applicant that would put to rest any concern

that trust funds were in jeopardy spanned the period from 22 December 2020 until 12 December 2023.

- 63.7. The Legal Practice Act ["LPA"] places a duty on applicant as a legal practitioner to co-operate with a disciplinary investigation, yet she failed to do so.
- 63.8. It is the applicant who should have presented testimony at the enquiry not the complainant because according to the applicant, the complainant was not capable of managing her child's funds, a fact known to applicant at the time when she took on the case.
- 63.9. The *pro forma* prosecutor does not testify or give evidence herself, she merely sets out the case based on the information that she had gathered, therefore an objection to her testifying, is misplaced.
- 63.10. The LPC had made it clear to the applicant in its email, that the DC can't sit at the pleasure of her attorney and that if he is not available, she should obtain a different attorney, therefore the grounds of alleged irregularity based on no mutually agreeable date having been reached with her attorney can't be considered as a valid ground.
- 63.11. The chairperson of the DC did not state, according to the transcript that the DC would come back to the applicant's sister to inform her if they would proceed in applicant's absence or grant an postponement and in any event no application for a postponement was made.
- 63.12. According to the transcript, there was no emphasis on the lack of a medical certificate but rather on no prior notification by the applicant that she would be absent.
- 63.13. The LPC did not have to refer the issue of the applicant's alleged unprofessional conduct to a DC before it could decide to bring striking off proceedings as it could proceed without a formal charge if in its

opinion, nature of the alleged misconduct is so egregious, that it justifies considering the applicant to be not fit an proper to practice as an attorney and remain on the roll.<sup>1</sup>

63.14. The LPC alleged that section 39(6) (a) of the LPA provides that a person charged *may* be present at the hearing of disciplinary proceedings and that means applicant did not have to be present and the proceedings were still regular although conducted in her absence after she received notice of the date of the enquiry and brought no application for a postponement nor did she notify the LPC in advance that she would not be present.

### **Evaluation**

64. The applicant did indeed present some version to the LPC at an early stage in response to the complainant. However, she did not explain some glaring contradictions in her reasons for not providing certain necessary information and for being absent on 13 December 2023.
65. It is clear, that on numerous occasions when the applicant sought a postponement of the DC enquiry or an extension of time within which to provide the requisite information, she relied on Western trained doctors' medical certificates, yet on the critical date of 13 December 2023, after she was informed by the LPC that the enquiry would proceed with or without her attorney, she provided no certificate of that nature. In light of those undisputed facts, the allegation that the DC was prejudiced against traditional healers, is no more than, a red herring.
66. It was argued on applicant's behalf that her state of mental health was so precarious that she could not provide a western medical certificate nor notify the LPC in advance of her intended absence. However if that was indeed the

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<sup>1</sup> Law Society of the Northern Provinces v Morobadi [2018] ZASCA 185 at [25]; Cape Law Society v Gihwala [2019] 2 All SA at [110] to [111]; S. A Legal Practice Council v Mokhele [2024] 2 All SA 272(fb) AT [42] TO [46]; SA Legal Practice Council v Nonxuba & Ano [2024] ZAWHC 410 at [78]

case, the glaring inconsistency in applicant's behavior remains unanswered, namely, how was she able to represent clients and do court appearances intermittently, during the period June 2023 until end November 2023 as stated by the attorney that accompanied her sister to the enquiry, if she was indeed too ill to attend the enquiry or to provide prior notice of her intended absence at the enquiry.

67. If her attorney represented the applicant to the best of his ability, as he is duty bound to, why did he not send a substitute to represent her on 13 December 2023, when the LPC had already stated that applicant should obtain a new attorney if her attorney was unavailable and bearing in mind the applicant's statutory duty to co-operate with the LPC's enquiry. There is therefore no facts from which we can conclude that if the chairperson had informed applicant's sister that the enquiry would proceed, that she would have ensured that applicant's attorney would send a substitute attorney to be present.
68. An even more self-evident explanation that ought to have been forthcoming from applicant, at an early stage, is why she did not deem it necessary to apply for a *curator* for the minor child shortly after she took instructions from the child's mother and aunt, especially since the applicant alleged that the minor's mother was inebriated when she met her. Applicant also failed to explain why she deemed it correct to keep the funds in her account, knowing full well, that it is a huge amount of money that ought to attract interest for the benefit of the minor.
69. Instead, applicant chose to shift the blame for not having accounted to the complainant, onto the complainant herself.
70. Applicant's counsel before us, accepted that the LPC has a statutory duty to protect the interests of the public, particularly with regard to trust funds held by legal practitioners who are attorneys.
71. The LPC's decision to constitute an investigating committee and later a disciplinary committee in response to the applicant's failure to account to the

LPC and her tardy responses, when they were given, can't be faulted as constituting bias.

72. The applicant had a duty to clarify the aforesaid preliminary aspects concerning how she conducted herself with regard to the interests of the minor claimant and she did not require her accountant's co-operation to do so nor did she require to have a bill of costs drawn up.
73. It is noteworthy that as soon as the applicant received the payment of the claim from the R.A.F, she debited the complainant's trust ledger with fees in an amount of R 458 500,75 on 29 July 2019, some 2 days after the RAF paid the applicant the sum of R1988 934,21. That transaction raises the question of where the statement of account to the complainant is, to justify that debit for fees. It does not assist applicant to thereafter inform the LPC that she instructed a company to draft a bill of costs when she already took some fees before doing a statement or a bill of costs.
74. Therefore, the applicant's challenge to the procedure followed by the DC on the grounds that they did not call for further evidence, rings hollow because applicant was asked by the LPC to provide the requisite explanations but she failed to do so and failed to appear before the DC.
75. Turning to the structure of the DC's process and its failure to notify the applicant of its decisions soon after it made them, the following provisions are relevant.
76. The LPA does not provide that the Disciplinary proceedings should be conducted on the basis of a decision of guilt and sanctions at the same hearing. If anything, section 40 (1) (a) provides that after the conduct of a disciplinary hearing, the committee *must*, within 30 days decide whether or not the legal practitioner is guilty of misconduct.
77. Clearly, section 40 (1) (a) provides for a hearing followed by a decision on guilt thereafter. That decision *must* be made *after* the hearing. That does not mean

that the DC could not, as they did, *in casu*, make its decision concerning guilt immediately after holding its enquiry.

78. Section 40 (1) (b) (i) provides that the DC *must* inform the legal practitioner and the council of its finding of guilt after making that finding *and* it must under section 40(1) (b) (ii), inform the legal practitioner of his/her section 41 right of appeal.
79. The DC should therefore have informed the applicant of her right to appeal in accordance with section 40(1) (b) (ii), at a stage even before the full council sat to consider the DC's recommended sanction of striking.
80. Section 40(2) (a) and (b) provides that the legal practitioner found guilty of misconduct *may* address the DC in mitigation of sentence *and may* call witnesses to give evidence in mitigation on his/her behalf.
81. Section 40(2) grants the affected legal practitioner a choice to lead evidence and make submissions in mitigation of sanctions.
82. Therefore, when the DC *in casu*, decided to consider the issue of guilt and sanction **simultaneously at the same hearing**, it deprived the applicant of her right to present factors in mitigation of sanction.
83. In so doing, the DC acted irregularly and that irregularity had the effect of denying the applicant a material right afforded her by the LPA and by section 34 of the Constitution.
84. Additionally, the applicant's right to be notified of an appeal process available to her prior to the consideration of the sanctions, in terms of section 40 (1) (b) (ii), was also violated in that at that stage, namely after the decision with regard to guilt was taken, she could have lodged an appeal which would have made the finding of guilt not final and therefore not capable of having been placed on the LPC's website. Applicant has alleged substantial reputational harm that occurred as a consequence of advertising the DC finding prematurely on the

LPC website. That is a potential harm and prejudice that could have been mitigated or avoided entirely, if the DC followed the provisions of section 40(2).

85. While the LPC's counsel argues that the section 39(6) (a) (i) provides that the legal practitioner *may* be present, (not must be present), therefore the DC could proceed in her absence, that approach does not take account of the applicant's right to be heard in mitigation of sanction.
86. The denial of her right to be heard on sanctions is in effect a denial of her section 34 Constitutional right of access to a fair public hearing and therefore it constitutes a gross irregularity in the DC's procedure concerning the imposition of sanctions.
87. While the LPC's counsel correctly submitted that it is not mandatory for a legal practitioner to attend the DC hearing, the failure to grant her an opportunity to do so after a finding of guilt and before imposing sanctions, effectively took away the applicant's right to choose to be present for the sanction part of the proceedings.
88. The LPC's rules promulgated for disciplinary proceedings merely parrot the LPA and are therefore of no assistance in further elucidating the issues discussed above.
89. While this Court appreciates that by the time the LPC notified the applicant in writing of the DC's decision, the applicant had already launched this Application without having exhausted internal remedies, there was however, nothing prohibiting the applicant from deciding to stay Part B of this application, namely the review, pending her exhaustion of the internal appeal process of the LPC.
90. Applicant therefore proceeded with this review despite knowing at the stage of this hearing, that internal remedies had not been exhausted, a process required

by section 7 (2) (a) of the Promotion of Administrative Justice Act 3 of 2000 [“PAJA”]<sup>2</sup>.

91. Applicant also failed to apply for an exemption<sup>3</sup> from having to exhaust internal remedies as provided for in section 7 (2) (c) of PAJA and did so at her own peril.
92. For the reasons set out above concerning the denial of the applicant’s right to choose to be present at the enquiry when sanctions were being considered and in light of the LPA making express provision of her right to choose to present mitigation factors, it was inappropriate for the DC to consider sanctions at the same hearing without having notified the applicant that it intended to do so.
93. I would therefore hold that the applicant has succeeded in her challenge to the review of the DC procedure followed at the enquiry held on 13 December 2023, only insofar as it determined sanctions at that hearing, prematurely.
94. The lack of procedural fairness concerning sanctions, is precisely the type of situation that PAJA seeks to address. Section 3(1) of PAJA, provides as follows:

*“Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.”*
95. Until the LPC has purged its irregularity in the proceedings, an irregularity that offends the *audi alteram partem* rule of natural justice, this Court is not at large to entertain the striking application *mero motu* as suggested by Respondent’s counsel.
96. I am inclined to set aside the sanctions imposed by the DC on 13 December 2023 and refer that aspect of the DC enquiry back to the LPC who must constitute a new DC with new members to decide the issue of sanctions afresh after having notified the applicant timeously and in writing of their intention to

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<sup>2</sup> Koyabe & others v Minister of Home Affairs & Others 2010 (4) SA 327 (CC) at [34]

<sup>3</sup> Nichol & Another v Registrar of Pensions Fund & Others 2008 (1) SA 383(SCA) at [15] to [16]

constitute a DC for that purposes and after informing her of her right to present evidence and argument in mitigation of sanctions.

97. The applicant had restricted this application to a challenge on procedural irregularity and elected not to address the merits of the charges against her. However, as outlined earlier herein, we can find no bases for concluding that the finding of the DC on the merits, namely the guilty finding ought to be disturbed.
98. The narrow point on which applicant is partially successful, is the failure of the LPC and its DC, to notify applicant in writing of its intention to make a finding on the merits *and the sanctions* at the same hearing and its failure to inform applicant that she had the right to present evidence and argument on sanctions, *prior* to it being imposed.
99. To the extent that the applicant has been successful in this review and given the limited complexity in this matter, I would award applicant the costs on a 60% basis including the costs of counsel on Scale B.

**IT IS ORDERED THAT:**

1. The sanctions and recommendation made by the Disciplinary Committee on 13 December 2023, in respect of the Applicant is set aside;
2. The decision on an appropriate set of sanctions and recommendations to be imposed on applicant is referred back to the Legal Practice Council, for it to be determined anew before a differently constituted Disciplinary Committee made up of different members;
3. The Legal Practice Council, is directed to provide the applicant with due notice of the reconstituted enquiry pertaining to sanctions and to inform her of her right to elect to present evidence and argument in mitigation of sanctions;

4. Applicant's review concerning the remaining ground of alleged irregularity is dismissed;
5. Respondents shall jointly and severally, the one paying, the other to be absolved, bear 60% of applicant's costs in Part B, namely the review application, including the costs of counsel on scale B;
6. Respondents shall bear the costs occasioned by the launching of the counter application and the withdrawal thereof;
7. Respondents shall bear the costs, if any, occasioned by their condonation application for leave to deliver a further affidavit

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**JUDGE R. ALLIE**

**FORTUIN, J:**

I agree.

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**JUDGE CM FORTUIN**

For the Applicant:

Instructed by

Adv L Dzai

WT Mnqandi & Associates

Ref: T Mnqandi

For 1<sup>st</sup> – 5<sup>th</sup> Respondents:

Instructed by

Adv T Sarkas

Fairbridges Wertheim Becker

Ref: S Datay



**Republic of South Africa**

**REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO: 5029/2024**

In the matter between:

**NONOZA POTELWA**

Applicant

And

**SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

1<sup>st</sup> Respondent

**WESTERN CAPE PROVINCIAL COUNCIL**

2<sup>nd</sup> Respondent

**TIMOTH COLIN GEOGGREYS**

3<sup>rd</sup> Respondent

**MARISKA SHRIVES**

4<sup>th</sup> Respondent

**CHARLENE LEE-ANN SNELL**

5<sup>th</sup> Respondent

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Coram : **ALLIE, J et FORTUIN, J**

Judgment by : **ALLIE, J**

For the Applicant: : **Adv L Dzai**  
Instructed by : WT Mnqandi & Associates (Ref: T Mnqandi)  
For 1<sup>st</sup> – 5<sup>th</sup> Resp : **Adv T Sarkas**  
Instructed by : Fairbridges Wertheim Becker (Ref: S Datay)

**Date of Hearing : 17 March 2025**

**Judgment delivered on : 2 May 2025**