



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

Case number: 21929/2023

In the matter between:

ANDELIN WILLIAMS-PRETORIUS

Applicant

and

**THE LEGAL PRACTICE COUNCIL, WESTERN CAPE
AYANDA KETTLEDAS**

First respondent
Second respondent

JUDGMENT DELIVERED ON 20 JUNE 2025

VAN ZYL AJ:

Introduction

1. This is an opposed application for judicial review brought under Rule 53 of the Uniform Rules of Court.¹ The applicant seeks an order reviewing and setting aside a decision taken by the first respondent's ("the LPC's") Investigation Committee on 2 May 2023 pursuant to Rule 40.5.2.2 of the Rules promulgated

¹ The applicant did not amend or supplement her papers under Rule 53(4) after receipt of the Rule 53 record, and did not deliver a replying affidavit to the LPC's answering affidavit. The second respondent, although opposing the application, did not deliver an answering affidavit.

under the Legal Practice Act 28 of 2014 ("the LPA" and "the LPA Rules"),² dismissing the applicant's complaint of misconduct against the second respondent.

2. The second respondent is an attorney practising in George. The complaint against him was dismissed on the grounds that the second respondent had provided a reasonable explanation for his actions.
3. The applicant contends that the LPC committed "gross irregularities" and other irregularities in dismissing the complaint. It is for this reason that she seeks to review and set aside the LPC's decision. Although the applicant does not say so, her application falls to be determined under the provisions of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). The LPC's decision clearly qualifies as administrative action as defined in section 1 of PAJA, in relevant part reading as follows:

"'administrative action' means any decision taken, or any failure to take a decision, by-

...

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

*which adversely affects the rights of any person and which has a direct, external legal effect, ..."*³

4. It is necessary briefly to refer to the events that transpired on the day of the hearing, before dealing with the merits of the application.
5. At 10:00, when the hearing should have commenced, the applicant was not

² In terms of section 38 of the LPA, the LPC may make rules regulating the procedure for the investigation of complaints and the conduct of disciplinary hearings. The rules, titled "*The South African Legal Practice Council Rules made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act 28 of 2014*", were published under GenN 401 in *Government Gazette* 41781 of 20 July 2018.

³ The exclusions set out in the definition are not applicable to the present matter.

present. The Court stood down to enable the applicant's name to be called outside of the relevant courtroom⁴ as well as in the foyer. The LPC's attorney was requested to find out whether the applicant was perhaps in the unopposed motion court⁵ or outside at the entrance to the High Court.

6. Upon having ascertained that the applicant was probably not at or in the court building, the Court stood down further to enable the LPC's attorney to telephone the applicant on her mobile number. Despite several attempts, the phone remained unanswered.⁶ The foyer and unopposed motion court were again checked to see whether the applicant was there, with no success.
7. The hearing resumed at long last – at about 11:00 - in the applicant's absence. In her address to the Court, the LPC's attorney confirmed that the applicant had undeniably received the notice of set-down, because the attorney had emailed the notice to the applicant, and had thereafter telephoned the applicant (on the same number used to try to locate the applicant at court) to ensure that the applicant knew what the date of set-down was.
8. The LPC's attorney had thus spoken to the applicant about the matter on more than one occasion prior to the date of the hearing. The attorney followed this procedure in relation to all documents and notices (including the LPC's heads of argument and practice notes) that had to be served on the applicant, because the applicant persistently refused to acknowledge receipt of any documentation handed to her in person.
9. The LPC's attorney explained that she had advised the applicant to deliver a supplementary founding affidavit upon receipt of the Rule 53 record, and thereafter, after delivery of the answering papers, to deliver a replying affidavit. The LPC had, further, offered legal assistance to the applicant at various stages

⁴ Court 8.

⁵ Usually held in Court 16.

⁶ The LPC's attorney provided the Court with an affidavit setting out the attempts made to contact the applicant.

in the proceedings. The advice was not heeded, and the offers were never taken up.

10. It was overwhelmingly clear that the LPC had done more than what is expected of a litigant in getting its opponent to court. It was also clear that the applicant had knowledge of the date and time of the hearing yet she, the *dominus litis*, chose not to attend.
11. I did consider merely removing the matter from the roll, given the applicant's non-appearance. On second thought, I formed the view that the merits of the application should be dealt with. A removal would mean that the application remained pending, and another judge (or two judges, as in the present case) would in the future be tasked with reading and considering this very same matter. The Court as currently constituted has done this already. For all its bulk (the papers are voluminous), the issues are narrow. What is more, the application is without merit, as will be explained below. It is no use fishing in an empty barrel, whether the fishing is done by this Court or by another in a few months' time.
12. It is, therefore, in the interests of justice and finality that the merits be determined.

Background

13. The applicant's complaint against the second respondent arose from a client-attorney relationship that had existed between them. The applicant's grievances essentially boil down to the following:

"12.1. The second respondent acted on behalf of the applicant in action proceedings and there were many concerning delays and excuses regarding the issuing of summons.

12.2 The second respondent had promised the applicant that summons would be

issued by end January 2021, whilst it was only issued and served on 8 July 2021."

14. It appears from the papers that the applicant complained, too, about the fact that she had to pay more in fees to the second respondent's firm than what she had been quoted at the outset.
15. Upon receipt of the complaint⁷ in February 2022, and pursuant to the provisions of Rule 40.1 read with Rule 40.2 of the LPA Rules,⁸ the LPC provided a copy of the complaint to the second respondent, requesting him to provide a written response thereto by 31 March 2022. This was done in adherence to the longstanding principle referred to in *Hepple v Law Society of the Northern Provinces*,⁹ that "*where allegations and evidence are presented against a legal practitioner, they cannot simply be brushed aside, the legal practitioner concerned is expected to respond meaningfully to them and to furnish a proper explanation.*"
16. On 31 March 2022, the second respondent provided a detailed written response to the LPC in respect of the complaint. On 6 April 2023 the LPC's Investigation Committee dismissed the complaint on the grounds that the second respondent provided a reasonable explanation for his conduct. He was cautioned in respect of his future relationship with clients. The LPC informed the applicant of the decision on 24 May 2023.
17. The applicant was dissatisfied by the decision taken by the LPC. She emailed an unissued notice of motion seeking review relief to the LPC on 14 June-2023. On 15 June 2023 the LPC informed the applicant that, if she was not satisfied with the decision, she had the right to appeal against it under the LPA. This advice notwithstanding, the applicant instituted this application on 4 December 2023.

⁷ The manner and form in which complaints must be lodged with the LPA are set out in Rule 45 of the LPA Rules.

⁸ These rules are quoted further below in the discussion of the relevant legal framework.

⁹ [2014] 3 All SA 408 (SCA) para 9.

18. It appears that the LPC received a copy of the issued application only during June 2024, some 6 months and a few days later, after the applicant had complained to the LPC about its failure to deliver the Rule 53 record. This is important for the purposes of a procedural aspect under PAJA to which I shall return later in this judgment.
19. It appears therefore that the application was never formally served on the LPC. The latter nevertheless, on receipt of the papers, gave notice of its intention to oppose the application, and delivered an answering affidavit which sets out a detailed history of the applicant's complaint and how it was dealt with by the LPC.¹⁰

The LPC's decision and the applicant's application for judicial review considered in the relevant legislative framework under the LPA and PAJA

20. It is necessary to have regard to the relevant provisions of the LPA which regulates the lodging and investigation of complaints against legal practitioners with the LPC, as well as the procedure prescribed under PAJA which governs the determination of applications for judicial review.
21. The LPC exercises statutory powers over the conduct of legal practitioners and candidate legal practitioners. This includes dealing with and adjudicating over complaints that may be raised against them. Chapter 4 of the LPA deals with professional conduct and the establishment by the LPC of disciplinary bodies.
22. Section 37 of the LPA provides as follows:

“37 Establishment of disciplinary bodies

¹⁰ The applicant seeks final relief on motion. Where factual disputes might arise on the papers, I approach the matter in accordance with the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-I.

- (1) *The Council must, when necessary, establish investigating committees, consisting of a person or persons appointed by the Council to conduct investigations of all complaints of misconduct against legal practitioners, candidate legal practitioners or juristic entities.*

...

- (3) *An investigating committee must, after investigating a complaint, if it is satisfied that-*
- (a) *the legal practitioner, or the candidate legal practitioner concerned may, on the basis of available prima facie evidence, be guilty of misconduct that, in terms of the code of conduct, warrants misconduct proceedings, refer the matter to the Council for adjudication by a disciplinary committee; or*
 - (b) *the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, as set out in the code of conduct, it must dismiss the complaint, inform the Council, the complainant and the legal practitioner, candidate legal practitioner or juristic entity of its finding and the reasons for it, whereafter the complainant may appeal in terms of section 41, if the complainant is aggrieved by-*
 - (i) the manner in which the investigating committee conducted its investigation; or*
 - (ii) the outcome of the investigating committee. ..."*¹¹

23. Section 37 must be read with Rule 40 of the LPA Rules. Rule 40 sets out the procedure to be followed when the LPC investigates complaints lodged with it against legal practitioners. It provides, *inter alia*, as follows:

"40 Investigation of alleged misconduct

- 40.1 When a complaint or allegation of misconduct against the respondent is referred to the investigating committee, that committee must investigate the complaint or allegation or cause the complaint or allegation to be investigated by the legal officer or by a legal practitioner appointed by the Council for that purpose.*

¹¹ Emphasis supplied.

...
 40.5 *If after investigating allegations of misconduct against the respondent the investigating committee is satisfied-*
 ...

40.5.2 *that the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, it must dismiss the complaint and inform the Council, the complainant and the respondent of its decision and the reasons for it. Without limiting the discretion of the investigating committee, the following may be grounds for determining that the conduct in question does not warrant misconduct proceedings-*
 ...

40.5.2.2 *that the respondent has given a reasonable explanation for his or her conduct;...*
 ...

40.6 *If a complainant is aggrieved by-*

40.6.1 *the manner in which the investigating committee conducted its investigation; or*

40.6.2 *the outcome of the investigation,*
he or she may appeal to the appeal tribunal in terms of section 41 of the Act."

24. It is clear from the underlined extract from section 37, read with Rule 40.6, that the LPA provides a dissatisfied complainant with an internal appeal to reconsider the investigating committee's findings. This is important for present purposes, because the applicant seeks judicial review under PAJA. I shall deal with this aspect further below when I discuss the relevant provisions of PAJA.

25. Section 41 of the LPA¹² regulates appeals against, *inter alia*, decisions of the LPC's Investigating Committee:

¹² The appeal procedure is set out in Rule 44 of the LPA Rules.

"(1)(b) A complainant who is aggrieved by-

- (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."*¹³

26. It is clear from the record that the LPC followed the prescribed process in considering and adjudicating upon the applicant's complaint. The LPC's Investigating Committee's decision thus gave rise to the availability of an internal appeal so that the applicant could have a second bite at the cherry.
27. As indicated, however, the applicant did not lodge an appeal with the LPC's appeal tribunal, despite being advised by the LPC to do so. She launched review proceedings instead. Section 7(1) and (2) of PAJA provides as follows:

"7 Procedure for judicial review

- (1) Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-*
 - (a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or*
 - (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.*

- (2)(a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.
- (b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.
- (c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice."¹⁴

28. These provisions give rise to two procedural hurdles standing in the applicant's way.

The applicant's delay in instituting the review application

- 29. The first hurdle is that the review application was issued by the Registrar of this Court on 4 December 2023, that is, later than 180 days from the date on which the applicant had become aware of the LPC's decision, on 24 May 2023, the LPC was never formally served with the papers. It seemingly obtained the papers by email during June 2024.
- 30. This means that the application was never properly instituted, and in any event not instituted with the time period prescribed in section 7(1) of PAJA.
- 31. It is by now trite that that this Court has no authority to determine the merits of a review application unless condonation has been granted under section 9 of PAJA in the event of non-compliance with section 7(1), should the interests of justice so require.¹⁵ The applicant has not made out any case for condonation

¹⁴ Emphasis supplied.

¹⁵ *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] 4 All

in this respect. She has not sought condonation and has not explained why proper service of the application had not been effected shortly after the application had been issued in December 2023. There is thus no factual basis set out upon which this Court can decide whether to exercise its discretion in overlooking the delay.¹⁶

The failure to exhaust internal remedies

32. The second hurdle is that the applicant failed to exhaust the internal remedy open to her under section 41(1)(b)(ii) of the LPA, as required in section 7(2) of PAJA. She deliberately ignored the internal appeal procedure, despite her attention expressly having been drawn thereto. This is unfortunate, because such internal appeal could have resolved the applicant's difficulties with the LPC's decision without having to incur the expense of resorting to litigation.¹⁷

"[35] Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation. Although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid."

33. As is the case with a failure timeously to institute a review application under section 7(1) of PAJA, a Court may condone an applicant's non-compliance with the duty to exhaust internal remedies under section 7(2) of PAJA.¹⁸
34. The applicant must, however, provide a factual basis upon which the Court's discretion can be exercised. Where no facts are placed before the Court, the Court cannot exercise a discretion. In the present matter, there is no basis

SA 639 (SCA) para 26.

¹⁶ See *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) paras 48 and 53.

¹⁷ See the discussion in *Koyabe and others v Minister for Home Affairs and others (Lawyers for Human Rights as Amicus Curiae)* 2010 (4) SA 327 (CC) paras 34-39.

¹⁸ *Koyabe supra* para 39.

provided upon which this Court can consider whether to suspend these proceedings to allow the applicant to pursue an internal appeal under section 41 of the LPA (under section 7(2)(b)) or to exempt the applicant from the duty to exhaust her internal remedy (under section 7(2)(c) of PAJA).

35. The applicant's wholesale failure to comply with two jurisdictional requirements of PAJA therefore precludes this Court from determining the merits of the review application.

The applicant's review grounds

36. I nevertheless consider briefly whether the applicant's papers reveal any reviewable irregularity on the LPC's part.

37. As indicated, the LPA regulates the function and the powers of the Investigating Committee of the LPC. Rule 40 of the LPA Rules sets out the procedure for investigating complaints lodged with the LPC against legal practitioners. In *Mavudzi and another v Majola and others*¹⁹ the Court remarked:

"The LPC as the primary regulator of the profession, is vested with several powers by the LPA. The apparatus to discipline is extensive. The principal attribute to the apparatus is that a practitioner who is accused of misconduct must enjoy a fair procedure, inclusive not only of audi alteram partem but that there been an appropriate investigation of the allegations against the practitioner."

38. On the papers, there has been an "appropriate investigation of the allegations" against the second respondent. The applicant seeks to review and set aside the LPC's decision on the following bases:

- 38.1. The LPC committed several gross irregularities in the dismissal of her complaint against the second respondent, as well as in the way in which

¹⁹ 2022 (6) SA 420 (GJ) para 34.

the LPC has dealt with the applicant, which led to “wrongful decision making” and “wrongful administrative processes”, and “making up rules as it goes”.

38.2. The LPC exceeded its powers, and was biased against the applicant.

38.3. The LPC abused its position of power and its office.

38.4. The decision-making process used by the LPC to arrive at dismissing the complaint was not fair.

39. The founding papers do not support these allegations, because the applicant does not set out any facts which could lead to the conclusions that she requires this Court to draw. The applicant’s frustration with the series of legal practitioners she employed over time is clear from the papers, but in her ire she no longer sees the wood for the trees. The founding papers are dense, but lacking in substance.

40. The LPC investigated and dealt with the applicant’s complaint as it was required to do in accordance with the relevant provisions of the LPA and the LPA Rules. In its investigation and consideration of the explanation provided by the second respondent, it resolved to dismiss the complaint as it is empowered to do under Rule 40.5.2.2.²⁰

41. It informed the applicant of its decision, as well as the procedure available to her should she wish to appeal the decision. The applicant, for reasons unknown, did not invoke her right to an internal appeal, but instituted this application instead.

²⁰ See *Sayed obo OM v HPCSA and others* [2024] ZAGPPHC 905 (13 September 2024) para 13: “...a Court of review, in an instance like the present, where the assessment is questioned, must also be guided by the prescribed method. If the assessment is based on a prescribed method, a Court of review cannot interfere with such an assessment.”

42. The applicant does not make out any case for the review relief sought. Therefore, even had she overcome the troublesome issues of delay and internal remedies under section 7 of PAJA, the application would have failed because none of the review grounds provided under section 6 of PAJA has been established on the facts as they appear from the papers.

Costs

43. The application was unsuccessful, and there is no reason why costs should not follow the event.²¹
44. The issues raised in this matter were not particularly complex, but the manner in which the applicant pursued the litigation was problematic in her refusal to adhere to the relevant rules of Court, and failing to heed advice that could have assisted her in her application. Her papers were voluminous, but obtuse and lacking in merit. She failed to appear at the hearing with no word to the Court or her opponent. To this date she has not reverted with an explanation for her absence. It seems that she simply abandoned the litigation. She is admittedly a lay person, but she is no stranger to the court system, having litigated in other Divisions. She is, even as a lay litigant, not without responsibilities.
45. Apart from the applicant's unsatisfactory conduct in this matter, the LPC is not an ordinary litigant but a public body performing a public duty. It was brought to court pursuant to the exercise of its obligations under the LPA. In matters of this kind the LPC is generally not mulcted in costs.²² Where the LPC acts against legal practitioners, costs are normally granted on an attorney and client scale. In the present matter, however, the applicant did not have the opportunity of arguing against the grant of a punitive costs order. She is not in the position of an attorney who would be aware of the punitive costs normally sought by the LPC.

²¹ See *Sackville West v Nourse and another* 1925 AD 516.

²² *Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA) para [33].

46. I am mindful of the fact that the various tariff scales upon which counsel's (or, in the present case, the LPC's attorney's)²³ costs are to be taxed do not have a punitive goal.²⁴ Rule 67A(3)(b) simply provides that in determining an appropriate scale of counsel's costs in the context of party and party costs order, a court "may" have regard to the factors set out in the sub-rule. Any other relevant factor may be considered – this Court's discretion has not been curtailed or circumscribed.
47. I have expressed my dissatisfaction with the applicant's conduct, but indicated that I do not regard a punitive costs order as appropriate. Nevertheless, taking into account as one of the relevant factors in the exercise of my discretion the difficulties experienced by the LPC in the course of this matter, I think that counsel's fees taxed on Scale B would be appropriate in respect of fees incurred from 12 April 2024 onwards.²⁵

Order

48. In the premises, I suggest that the application be dismissed, with costs on the party and party scale, including the costs of the first respondent's attorney taxed on Scale B under Rule 67A(1)(b), read with Rule 69.


P. S. VAN ZYL

Acting Judge of the High Court

²³ "Counsel" in the context of Rule 67A should be understood to mean any legal practitioner, whether a referral advocate, a trust account advocate, or an attorney with higher appearance rights, who actually does the work of counsel.

²⁴ See *Mashavha v Enaex Africa (Pty) Ltd* 2025 (1) SA 466 (GJ) para 19: "*The focus of Rule 67A is not on the conduct of the losing party. It is primarily on the nature of the case, and, secondarily, on the way that the successful party presented it.*"

²⁵ See the discussion in *Wanga v Road Accident Fund* (case number 4503/2021, unreported judgment of the Western Cape High Court (per Adams AJ) delivered on 19 November 2024) at paras [7]-[11].

I agree, and it is so ordered.



H. SLINGERS
Judge of the High Court

Appearances:

**The applicant in person
(no appearance at the hearing)**

For the first respondent:

Ms M. Engela, CK Inc. Attorneys