



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 23500/2020

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 31 JULY 2025

SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

SIMPHIWE FREEMAN DUBE

Respondent

Summary: *Legal practitioner seeking leave to appeal an order striking him from the roll of legal practitioners. Found that the appeal would not have a reasonable prospect of success and that there are no other compelling reasons why leave to appeal should be granted. The requirements set out in Section 17(1)(a) of the Superior Courts Act 10 of 2013 have not been met. Leave to appeal refused.*

ORDER

The application for leave to appeal is refused with costs, on the scale as between attorney and client.

J U D G M E N T (In the application for leave to appeal)

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of the matter on Caselines. The date of the handing-down is deemed to be 31 July 2025.

DAVIS ADJP (with Lenyai J (Ms) concurring)**Introduction**

[1] On 27 August 2021 this court, then constituted by Tlhapi J (Ms) and Mnyovu AJ (Ms), referred an application launched by the Legal Practice Council (the LPC) against Mr Freeman Dube (the legal practitioner), to a freshly constituted bench for determination (the referral order). The application was to strike the practitioner from the roll or to suspend him from practice.

[2] The referral order provided that the determination to be made must be done after hearing oral evidence on two aspects. In addition, the LPC was ordered to “avail the respondent [the legal practitioner] with all the documents it acquired from different sources” ... pertaining to one of the aspects referred to oral

evidence, being a bill of costs forming the subject matter of a complaint by one of the legal practitioner's erstwhile clients.

[3] On 29 August 2023 the legal practitioner's belated application for leave to appeal the referral order was refused.

[4] Over the course of a number of days during March 2025 this court heard oral evidence in respect of the aspects referred to oral evidence and argument from both parties in respect of the LPC's application as a whole, which has been supplemented from time to time in respect of additional offending conduct alleged against the legal practitioner.

[5] On 15 April 2025 this court ordered that the legal practitioner be struck from the roll of legal practitioners (the striking off order).

[6] On 13 June 2025 this court heard an application for leave to appeal the striking off order. This is the judgment in respect of this latter application for leave to appeal.

The legal practitioner's grounds for seeking leave to appeal

[7] In the written application for leave to appeal, numerous grounds were listed.

[8] In oral argument however, Adv Mokotedi SC, who had been acting for the legal practitioner since at least the previous application for leave to appeal, limited the argument to five points. These were the following:

- has the bar been raised in respect of the test for granting leave to appeal?

- the determination to be made by the court was limited to only the two aspects referred to oral evidence and it was not permitted to consider the striking-off application *de novo*.
- the court had not been entitled to consider the LPC's supplementary founding affidavits.
- it was in the interest of justice that leave to appeal be granted.
- it was "unfair" to saddle the legal practitioner with costs, particularly as there had been "flaws" in the judgment pertaining to the referral order.

The test for leave to appeal

[9] We find it unnecessary to enter into the debate as to whether the use of the word "would" in relation to prospects of appeal, used in section 17 (1)(a) of the Superior Courts Act¹ has raised the bar when compared with the wording of the previous Act, as mentioned in a number of judgments².

[10] We will content ourselves, in assessing whether the test mentioned in Section 17(1)(a)(i) of the Superior Courts Act has been met, with the following formulation of the test by the Supreme Court of Appeal³ "*An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal*".

¹ 10 of 2013.

² Such as in *Acting NDPP v DA* [2016] ZAGPPHC 489 (24 June 2016); *Mototo v Free State Gambling Board* [2017] ZAFSHC 80 and *Notshokovu v S* [2016] ZASCA 112 (7 September 2016).

³ In *MEC for Health, Eastern Cape v Mkhitha and Ano* [2016] ZASCA 176 (25 November 2016 at par [17].

[11] As set out hereunder, we conclude that the legal practitioner does not have such reasonable prospects of success on appeal. If the bar has been raised, as Adv Mokotedi SC himself contended it has, then the legal practitioner's application should even more so fail.

Did the referral order limit the ambit of this court's powers?

[12] The contents of the initial order have substantively been dealt with in our previous judgment. It is clear from the wording of the order that the whole of the application had been referred for consideration by a freshly constituted bench. The only rider was that, in respect of two aspects, oral evidence had to be heard and considered.

[13] The legal practitioner's contention was that the previous court, in the judgment delivered when granting the referral order, had already partially completed the first one, or even two of the three steps required for orders of striking off, and that we simply had to conclude, after having heard oral evidence, what the appropriate sanction should be.

[14] The above reasoning is, with respect to those who had formulated it, flawed. It would mean that two different courts, constituted by different judges would, in a piecemeal fashion and independent of each other, but in a composite fashion exercise the value judgments and discretion required in matters of this nature. This proposition merely has to be stated to illustrate its absurdity. Courts simply do not fashion in this manner and, from a reading of the initial order, this is simply not what had been contemplated or ordered.

[15] The absurdity of this piecemeal approach had also been debated during the legal practitioner's previous application for leave to appeal the referral order, and

it had, in our view correctly so, then already been rejected⁴. We also reject this argument and find that there is no sound or rational basis that another court would come to a different conclusion.

Should the supplementary affidavits have been allowed and considered?

[16] In our view this aspect has sufficiently been dealt with in our previous judgment. The point is simply that the LPC has the obligation to put all evidence it has of offending conduct before a court to enable a court to make up its own mind whether a legal practitioner is still fit and proper to practice law.

[17] The *sui generis* nature of applications of this kind and the duty of a legal practitioner to actively deal with allegations of offending conduct⁵, required in our view that the legal practitioner should have properly dealt with the contents of the supplementary affidavits, rather than ignore them and, at the end of a protracted matter, after their contents have been debated, argue that they should be ignored. As we have previously indicated, the LPC has on numerous occasions, both in case management proceedings and in writing, invited the respondent to deal with these affidavits. Despite ample opportunity, he has failed to do so.

[18] Again, we find no sound, rational basis to conclude that there is a reasonable prospect that a court of appeal “would” find otherwise.

Interests of justice

[19] Section 17(1)(a)(ii) provides that, as a separate ground, a court may grant leave to appeal if the interests of justice require it to do so. This would generally

⁴ See par 14 of the judgment of De Vos AJ with which Ledwaba ADJP had agreed in respect of the previous application for leave to appeal.

⁵ *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) and *Hepple v Law Society of the Northern Provinces* [2014] ZASCA 75 (29 May 2014) at par 3.

be where conflicting judgments by lower courts need to be reconciled or considered by a court of appeal or when the broader interests of society may be impacted by a judgment.

[20] In the present instance there are no conflicting judgments. In fact, as indicated before, the legal practitioner had previously been alerted by the Supreme Court of Appeal of his duties and obligations as a legal practitioner when he had previously been suspended from practice⁶.

[21] There are also no other broader societal issues which would indicate that it would be in the interests of justice that leave to appeal be granted. The application should therefore fail in respect of this ground.

The “fairness” of the costs orders

[22] We have considered the issue of costs afresh and found no flaw in the manner in which we had exercised our discretion after a due consideration of the matter, which could have given rise to a reasonable prospect that a court of appeal would order otherwise. Similarly, in respect of the present application, we find that costs should also follow the event, on the same scale as before.

Conclusion

[23] In the premises, we find that the legal practitioner has not satisfied the tests set out in sections 17(1)(a)(i) and (ii) of the Superior Courts Act.

Order

[24] Accordingly, the following order is granted:

The application for leave to appeal is refused with costs, on the scale as between attorney and client.

⁶ *Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA).


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree


M LENYAI
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 13 June 2025

Judgment delivered: 31 July 2025

APPEARANCES:

For the Applicant:

Attorney for the Applicant:

Mr R Stocker together with Ms N Collett
Rooth & Wessels Inc., Pretoria

For the Respondent:

Attorney for the Respondent:

Adv K Mokotedi SC
VM Netshipale Attorneys
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