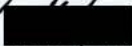




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 048040/24

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED.
SIGNATURE:  DATE: <i>2/10/25</i>	

In the matter between:

**GILDENHUYS MALATJI INCORPORATED
ATTORNEYS**

Applicant

and

EPHRAIM LEPOMANE

First Respondent

MORIBE ATTORNEYS

Second Respondent

KATLEGO SANDFORD MORIBE

Third Respondent

LEGAL PRACTICE COUNCIL

Fourth Respondent

ROAD ACCIDENT FUND

Fifth Respondent

IN RE:

EPHRAIM LEPOMANE

Applicant

and

**GILDENHUYS MALATJI INCORPORATED
ATTORNEYS**

First Respondent

MORIBE ATTORNEYS

Second Respondent

KATLEGO SANDFORD MORIBE

Third Respondent

LEGAL PRACTICE COUNCIL

Fourth Respondent

ROAD ACCIDENT FUND

Fifth Respondent

JUDGMENT

RAMAWELE AJ:

- [1] This is an application for leave to appeal against the judgement delivered on 19 December 2024.
- [2] For convenience, the parties will be referred to as they were cited in the main application. The Applicant in this matter was the First Respondent in the main application.
- [3] The Applicant sought the following orders:

- 3.1 That the First Respondent be ordered to charge its fees in respect of the settled RAF claim up to a third of the fees chargeable by the Second Respondent as the Instructing Attorneys;
- 3.2 That the First Respondent be ordered to charge its fees on a scale as between party and party as a correspondent attorney in respect of the settled matter between the Applicant and the Fifth Respondent, under Case Number: 77103/2016;
- 3.3 That the First Respondent be ordered to furnish the Applicant's Attorneys of record with all the contents of the file in the matter, as between the Applicant and the First Respondent, under Case Number: 77103/2016;
- 3.4 That at least 25% of the capital amount (i.e R170 000) be paid into the Fourth Respondent's nominated account pending the outcome of the matter being Case Number: 2023-127936, before this court; and
- 3.5 That the First Respondent be precluded from handling the Applicant's Road Accident Fund matter, as it relates to the Fifth Respondent, attending to taxation of the costs relating to quantum of the matter.

- [4] During the hearing it became evident that the Applicant primarily pursued reliefs [3.2] and [3.3].

Respondent's Opposition

- [5] The First Respondent relied, amongst others, on:

- 5.1 A business proposal outlining the instructing/corresponding attorney relationship with the Second Respondent;
- 5.2 A Power of Attorney allegedly signed by the Applicant; and
- 5.3 A Fee Agreement between the Applicant and the First Respondent.

Grounds of Appeal:

- [6] The Applicant raised two points:

- 6.1 That the court failed to address the validity/enforceability of the fee agreements; and
- 6.2 That the court erroneously found that a concession was made when none was.

Analysis

- [7] At the hearing, it became clear that the dispute regarding the fee scale was no longer alive. Counsel for the First Respondent stated:
“ indeed the First Respondent charged its fees on party and party scale..... the relief in relation to the party and party fees is moot”.
- [8] This unequivocal statement rendered the dispute moot. The court made an order for certainty to prevent recurrence, especially given pending litigation between the same parties.
- [9] The Applicant argued that the court should have addressed the validity of the fee agreements. However, no relief was sought to declare any agreement null and void.
- [10] As held in ***Gcaba v Minister of Safety and Security***¹, a court’s jurisdiction is determined by the pleadings. It is not for the court to adjudicate claims not pleaded.
- [11] Similarly, the First Respondent did not lodge a counter-application seeking to declare the agreements valid. Thus, the court was not required to determine that issue.

Prospects of success

- [12] In *Smith v S* 2012 (1) SACR 567 (SCA) at para 7, the test for reasonable prospects of success requires a realistic chance of a

¹ 2010 (1) SA 238 CC at para [75]

different outcome on appeal. This application does not meet that threshold.

Costs

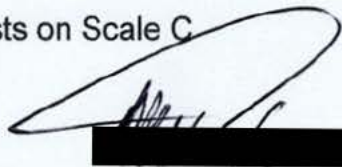
[13] Although punitive costs were considered, the court found no exceptional circumstances to justify them. Standard costs are appropriate. However, a party cannot declare a dispute moot and later attempt to revive it. This constitutes an abuse of process.

Order

[14] In the premises I make the following order:

14.1 The application for leave to appeal is dismissed.

14.2 The Applicant is ordered to pay costs on Scale C


[REDACTED]
R RAMAWELE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

2/10/25

Appearances:

Attorney for the Applicant: Gildenhys Malatji Inc.

Counsel for the Applicant: M Van Der Westhuizen

Attorney for the First Respondent: MN Mahapa Inc. Attorneys

Counsel for the First Respondent: Clinton Muza