



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

JUDGMENT

**Not Reportable
Case No: 2025-199912**

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

And

JAN LODEWYK FOURIE

Respondent

Coram: DA SILVA SALIE, J et RALARALA, J

Heard on: 3 March 2026

Delivered on: 3 March 2026

Summary:

Practice — Legal practitioners — Disciplinary proceedings — Leave to appeal — Conditional suspension imposed instead of striking off — Applicant contending dishonesty necessitated removal — Section 17(1) Superior Courts Act — Heightened threshold (“would” have reasonable prospects of success) — Sanction involving exercise of judicial discretion — No material misdirection demonstrated —

Grounds amounting to disagreement with balancing of factors — No reasonable prospects of success — Leave to appeal refused — No order as to costs.

ORDER

1. The application for leave to appeal is dismissed with no order as to costs.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] The applicant seeks leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order handed down on 26 November 2025, save for the order as to costs.

Judgment of 26 November 2025

[2] In the judgment sought to be appealed against, delivered after hearing on 26 November 2025, this Court declined to strike the respondent from the roll of legal practitioners and instead imposed a stringent order of conditional suspension.

“Order

1. *The application to strike the respondent from the roll of legal practitioners is refused.*
2. *The respondent may practice only as an employed attorney under the supervision of a legal practitioner in good standing, approved in writing by the LPC.*
3. *The respondent is prohibited from accessing, operating, controlling, or having signing powers in respect of any trust account.*
4. *The respondent shall, within thirty (30) days of this order:*
 - (i) prepare and furnish to the LPC and to Ms. Coetzee a full debatement and calculation of all interest due on the R500 000 trust funds for the period July 2024 to date of the payment, calculated in accordance with the applicable LPC Rules and prescribed rates; and*
 - (ii) pay such interest to Ms. Coetzee’s attorney or record trust account.*
 - (iii) Proof of calculation and payment shall be delivered to the LPC.*
5. *Within three (3) months, the respondent shall file with the LPC and this Court a psychological or psychiatric report confirming his therapeutic progress and making recommendations regarding ongoing treatment.*
6. *The respondent shall undergo psychotherapy or counselling as recommended in the report, and proof thereof shall accompany all quarterly reports as ordered in paragraph 8 below.*
7. *The respondent shall, within six (6) months, successfully complete the LPC’s Trust Account Management Course, the Practice Management Programme, and any ethics or professional responsibility courses the LPC may direct.*
8. *The respondent and his supervising attorney shall file quarterly reports with the LPC confirming:*
 - (i) Compliance with this order.*
 - (ii) The nature of work undertaken.*
 - (iii) That the respondent has not accessed or handled trust monies; and*

(iv) *Any concerns regarding his conduct or suitability to practice as an attorney.*

9. *The LPC is granted leave to approach this Court on the same papers, duly supplemented, in the event of non-compliance of the conditions as ordered herein.*

10. *After the expiry of three (3) years, the respondent may on the same papers duly supplemented, apply to this Court, on good cause shown and with the LPC's input, to resume practice for his own account.*

11. *The respondent shall pay the applicant's costs on the attorney-and-client scale."*

Grounds for leave

[3] The nub of the applicant's complaint is that this Court materially misdirected itself in exercising its discretion by suspending the respondent **from practising for his own account** (employed as an attorney) rather than removing him from the roll.

The Applicable Test – leave to appeal

[4] The threshold for leave to appeal is governed by section 17(1)(a) of the Superior Courts Act 10 of 2013.

[5] Leave may only be granted where the Court is of the opinion that the appeal would have a reasonable prospect of success or there exists some other compelling reason why the appeal should be heard.

[6] The word "would" denotes a heightened threshold. It is not sufficient that another court might come to a different conclusion. There must be a sound, rational basis to conclude that another court would do so.

[7] The applicant further relies on the interests of justice as an independent basis for appealability.

The Nature of the Discretion Exercised

[8] Proceedings to strike a practitioner from the roll are *sui generis* and entail a three-stage enquiry:

(a) whether the misconduct has been established.

(b) Whether the practitioner is a fit and proper person to continue to practise;
and

(c) the appropriate sanction.

[9] The third stage involves the exercise of a judicial discretion in which the Court must weigh the protection of the public, the interests of the profession, and the personal circumstances of the practitioner.

[10] It is trite that an appellate court will not lightly interfere with the exercise of such a discretion unless it is shown that the Court acted on a wrong principle, misdirected itself on the facts, or reached a decision that no reasonable court could reach.

Assessment of the Grounds Advanced

[11] The applicant contends that once dishonesty is established, removal is the default sanction unless exceptional circumstances are proved.

[12] That proposition, stated in general, is correct. However, it does not follow that every case involving dishonesty inevitably results in removal. The jurisprudence recognises that the ultimate enquiry remains one of proportionality and protection of the public.

[13] The applicant submits that this Court over-emphasised the respondent's personal circumstances and under-emphasised the protection of the public. In our view that submission does not withstand scrutiny of the judgment and order as a whole.

[14] The judgment sought to be appealed against carefully considered the following:

- (a) the misappropriation of trust funds.
- (b) the perpetuation of a fraud upon the complainant.
- (c) the payment of "interest" from undisclosed sources.
- (d) the purported bank statement; and
- (e) the respondent's failure to make full disclosure.

[15] This Court expressly found that the respondent was not fit to practise independently or with access to trust monies. The conditional suspension order stripped him of trust account autonomy and subjected him to stringent supervision.

[16] The applicant's submission that the finding of unfitness is logically incompatible with suspension conflates the second and third stages of the enquiry. A finding that a practitioner is not presently fit to practise independently does not inexorably dictate removal where the Court is satisfied that the public can be adequately protected by a restrictive order.

[17] The reliance placed on authorities such as *Hewetson*, *Vassen*, *Botha* and *Budricks* do not demonstrate that this Court misapplied the applicable principle. Those cases reaffirm that removal is the default position in cases of dishonesty absent exceptional circumstances. They do not eliminate the Court's discretion.

[18] The applicant further contends that the Court accepted "exceptional circumstances" without proper proof. The judgment reflects that the Court did not accept those circumstances at face value but evaluated them in the context of the full factual matrix, including restitution and the safeguards imposed. There is no numerous *clausus* as to what circumstances may be considered exceptional in the Court's determination of a striking off application on the basis of misappropriation of trust funds. Ordinary circumstances considered cumulatively can be accepted as exceptional taking into account the full matrix of the matter. This Court's approach in this matter finds support in the unreported decision of *LPC v Milford*, case no: 6945/2017, WCHC (18 October 2019). The matter was similarly an application to strike off the respondent from the roll of attorneys as a result of the misappropriation of trust funds. In *Milford*, the Court did not grant the striking off as sought, instead suspended the respondent from practicing as an attorney for a period of two (2) years, which suspension was suspended for a period of five (5) years. It was further ordered that the respondent could not practice for his own account for two (2) years as well as other conditions including completing the Practice Management Training course offered by LEAD and passing the Attorney's bookkeeping admission exam. The order also provided conditions of oversight by the LPC's disciplinary committee. Clearly the order in *casu* is far more stringent than that imposed in *Milford*.

[19] The complaint that this Court was influenced by sympathy is not borne out by the reasoning. The order imposed was stringent and protective in nature for the benefit of the public.

[20] Ultimately, the applicant's grounds amount to a disagreement with the way this Court balanced competing considerations which is insufficient to meet the section 17 threshold.

Reasonable Prospects of Success

[21] It is trite that the consideration for reasonable prospects of success is not whether another court could reach a different conclusion, but whether it would do so.

[22] The sanction imposed was rationally connected to the findings made, was protective of the public, and was grounded in established principle in the exercise of this Court's discretion. No material misdirection has been demonstrated. Thus, there is no reasonable prospect that another court would interfere with the exercise of this Court's discretion.

Interests of Justice

[23] The applicant submits that, because the matter was heard by a Full Bench, leave must be granted to the Supreme Court of Appeal. That submission is incorrect. The fact that a matter was heard by two judges does not lower the threshold in section 17(1).

[24] No compelling reason has been shown why the appeal should be heard in the interests of justice. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes.

(Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020(5) SA 35 (SCA) – see paragraph 2)

Order

[25] For the reasons set out above I order as follows:

“The application for leave to appeal is dismissed with no order as to costs.”

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

I AGREE:

N. RALARALA
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant: Adv. Snellenburg SC

Instructed by: CK Inc. Attorneys

For Respondent: Mr J Fourie (In Person)