



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 3502/2025

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

THANDUXOLO THEOPHILUS MAFANYA

RESPONDENT

Neutral citation: *The South African Legal Practice Council v Mafanya* (3502/2025)
[2026] ZAFSHC 68 (20 February 2026)

Coram: DAFFUE *et* CHESIWE JJ

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 20 February 2026.

Summary: Application for leave to appeal by the South African Legal Practice Council (the Council) against the dismissal of its application for the interim suspension of an attorney from practice in terms of s 43 of the Legal Practice Act 28 of 2014 – the Council's application for leave to appeal dismissed.

ORDER

The application for leave to appeal is dismissed, each party to pay their own costs.

LEAVE TO APPEAL JUDGMENT

Daffue J (Chesiwe J concurring)

[1] On 5 November 2025 we dismissed the applicant's application in terms of s 43 of Legal Practice Act 28 of 2014 (the LPA) for the suspension of the respondent from practice pending finalisation of a disciplinary hearing to be instituted against him, alternatively pending an application to have his name struck from the roll of legal practitioners.

[2] The applicant seeks leave to appeal to the Supreme Court of Appeal. The test for leave to appeal has recently been reinstated as follows in *Ramakatsa and Others v African National Congress and Another*.¹ I quote:

'Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'. I am mindful of the decisions at high court level debating whether the use of the word "would" as opposed to "could" possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted.

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

[3] By agreement, the parties filed heads of argument whereupon we considered the application for leave to appeal in chambers.

In *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others*² (*Chueu*) the Supreme Court of Appeal accepted that the requirements for an interim interdict are applicable to applications in terms of s 43 of the LPA. As held in *Chueu*, such applications are brought 'for the protection of the general public against malfeasance of legal practitioners.' In paragraph 32 of the judgment the Court stated the following:

'Such applications should be launched only where there is no other means of safeguarding the public from the alleged malfeasance of a legal practitioner. An interim order for suspension has a very grave impact on the professional life of a legal practitioner, who would nonetheless be severely prejudiced if exonerated at the end of an investigation by the LPC.'

[4] In *South African Legal Practice Council v Kgaphola and Another*³ the Supreme Court of Appeal referred to the applicant's statutory duty to approach the court to protect the public and emphasised the general rule that it is entitled to its costs on an attorney and client scale, even if unsuccessful.⁴ In *Chueu*, the court stated: 'Of all litigants, one would have expected assiduous compliance with the rules of this Court . . .'.⁵ Notwithstanding a successful appeal by the LPC in *Chueu*, no order as to costs was made in respect of the appeal.

[5] I am satisfied that the Supreme Court of Appeal would not reasonably arrive at a conclusion different to ours. There is no sound rational basis to conclude that there are

² *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others* [2023] ZASCA 112 paras 30 and 31.

³ *South African Legal Practice Council v Kgaphola and Another* [2025] ZASCA 66; 2026 (1) SA 84 (SCA).

⁴ *Ibid* paras 44 and 45.

⁵ *Chueu* para 38.

prospects of success on appeal. I refer to our judgment dismissing the application for suspension and do not intend to deal with the reasons for my conclusion in any detail. I limit the reasons to the following.

a. Based on the specific facts of the matter at hand, we were satisfied that insufficient facts have been pleaded to justify an interim suspension. The respondent conducts his practice in the Eastern Cape but tried to expand it by opening a branch office in Bloemfontein which was closed within a few weeks. His alleged misconduct relates to the period when he conducted a practice in Bloemfontein. But this is done business. If the applicant intends to proceed with further investigations and a disciplinary hearing, it shall continue to do so. When the application was brought and eventually heard, there was no threat to the public at large relating to the aborted Bloemfontein practice.

b. The Bloemfontein branch of the applicant did not even consider the damage that would be caused to the respondent's practice in the Eastern Cape if an interim order of suspension was granted. It did not even try to explain how much time it would need to finalise a possible disciplinary hearing. It did not liaise with the applicant's Eastern Cape branch on the respondent's standing but rushed off to court in an endeavour to obtain urgent relief.

c. We are of the view that there is no basis that another court would reasonably conclude that the respondent's practice, based in the Eastern Cape, shall be closed pending investigations and a possible disciplinary hearing in Bloemfontein. Our decision to dismiss the application for an interim order of suspension was not lightly taken but was based on the specific circumstances.

d. The application for leave to appeal is also directed at the costs orders. We accepted that the applicant, as the guardian of morals of the legal profession, is generally entitled to its costs on an attorney and client scale, even if unsuccessful. However, as indicated, there was sufficient reason to grant the costs orders. The applicant is the regulator of the profession. It unsuccessfully insisted that the application be heard on an urgent basis and thereafter, its attorney caused, in his own words, 'an administrative nightmare'. The costs issue has been dealt with in paragraphs 26 and 27 of the judgment. Bearing in mind the specific circumstances and the example that should be set by the applicant as the regulator of the profession, the costs orders were explained. I am satisfied that, notwithstanding the general rule, another court shall not interfere with the discretion exercised.

[6] The applicant also submitted that there is a compelling reason why leave to appeal shall be granted. It *inter alia* relied on the Supreme Court of Appeal's dictum in *South African Legal Practice Council v Mokhele*⁶ (*Mokhele*) that there was a need for a proper interpretation of s 43 of the LPA. In my view this is not a suitable set of facts to warrant that court's attention. In any event, a few months prior to the *Mokhele* judgment, the same court dealt in sufficient detail with the requirements of s 43.

[7] Consequently, the following order is made:

The application for leave to appeal is dismissed, each party to pay their own costs.



J P DAFFUE

JUDGE OF THE HIGH COURT

I concur.



S CHESUWE

JUDGE OF THE HIGH COURT

⁶ *South African Legal Practice Council v Mokhele* [2023] ZASCA 177 par 9.

Appearances

For the Applicant: M S Mazibuko
Instructed by: Moruri Attorneys Inc, Bloemfontein.

For the Respondent: Z Nyezi
Instructed by: LM Attorneys & Partners, Bloemfontein.