



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

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED. ✓

DATE: 08/05/2026

SIGNATURE

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

Case No: 2024-120892

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

KGAOGELO XAVIERA MODISAKENG

Respondent

In re:

In the *ex parte* application of:

KGAOGELO XAVIERA MODISAKENG

Applicant

For her admission as a legal practitioner and authorisation to the Legal Practice Council to enrol the Applicant as an Attorney in terms of Section 24 read with Section 30 of the Legal Practice Act, 28 of 2014

JUDGMENT

The judgment and order are published and distributed electronically.

Summary: Application by Legal Practice Council (LPC) to rescind order of court granted ex parte, admitting legal practitioner (Respondent) in terms of section 24(2) of Legal Practice Act (LPA) and authorising enrolment as attorney in terms of section 30(2) of LPA. Common cause that Respondent did not comply with Regulation 6(1) read with Regulation 6(10) at the time when order was granted, but having instead completed vocational training as pupil in terms of Regulation 7. LPC refused to issue “letter of no objection” but court granting admission order under mistaken impression that such letter was issued and filed on record, granted order for admission and enrolment as attorney. Respondent opposed recission application and sought condonation for non-compliance with Regulation 6 requirements and an order admitting Respondent as legal practitioner and enrolment as attorney, having completed required vocational training in terms of Regulation 6 after the impugned order was granted.

Held; Absent an express provision in the LPA to grant condonation for non-compliance with any requirement for admission as legal practitioner or enrolment, the court has no inherent jurisdiction to condone non-compliance with Section 24(2) which enjoins the court to be, inter alia, satisfied that the applicant is duly qualified as set out in section 26 of LPA, and which in turn refers to practical vocational training prescribed by the minister(Section 26(1)(c)). These provisions are statutory requirements and a jurisdictional prerequisite for an order under section 24(1) of LPA, and condoning non-compliance with such statutory requirements will amount to overreach and a breach of the doctrine of the separation of powers. When court issued admission order ex parte, having not been satisfied that there was due compliance with section 24(2) of PLA, court committed legal error and order thus incorrectly granted. Condonation application and counter-application refused and admission order rescinded.

PA VAN NIEKERK, J

INTRODUCTION:

- [1] Applicant is the South African Legal Practice Council ("*the LPC*"), a statutory body established in terms of section 4 of the Legal Practice Act, No. 28 of 2014 ("*the LPA*") and which came into effect on 1 November 2018. The LPC is a body corporate with full legal capacity which exercises jurisdiction over all legal practitioners and candidate legal practitioners, and one of the objectives of the LPA is *inter alia* to create a single unified statutory body to regulate the affairs of all legal practitioners, in the public interest, by means of a single statute.
- [2] Respondent is an adult female who applied for an order to be admitted as a legal practitioner in terms of section 24(2) of the LPA and an order that the Applicant be authorised to enrol her as an attorney in terms of section 30(2) of the LPA.
- [3] On 21 January 2025 the Respondent was admitted by a full bench of this court as a legal practitioner and the Applicant was authorised to enrol her as an attorney of the roll kept for that purpose by Applicant ("*the admission order*"). The admission order was granted on an *ex parte* application instituted by Respondent seeking an order to that effect. The Applicant now applies for an order to rescind the admission order by claiming the following relief in the notice of motion:
- "1. That the court order dated 21 January 2025, per the Honourable Justices Basson and Kumalo in terms of which the respondent was admitted as a legal practitioner and the applicant authorised to enrol her as an attorney of the Honourable Court, be rescinded;
2. That the respondent be ordered to pay the costs of this application on Scale C;
- and

3. *That the applicant be granted further and/or alternative relief consistent with the facts canvassed in this application”.*

[4] Respondent opposed the rescission application and by way of a counter-application seeks relief framed in the notice of counter-application as follows:

- “1. *Condonation for the applicant’s failure to comply with the provisions of Regulation 6(10) of the Regulations of the Legal Practice Act, 2014 read together with Regulation 6(1)(a) or (b), of the Regulations of the Legal Practice Act, 2014; Regulations under section 109(1)(a) of the Legal Practice Act, 2014;*
2. *Condonation for the applicant’s failure to comply with the provisions of Rule 22.1.5.1 of the rules of the South African Legal Practice Council;*
3. *Admitting the applicant to practice as a legal practitioner of the High Court of South Africa in terms of section 24(2) of the Legal Practice Act, 28 of 2014;*
4. *That the Legal Practice Council be authorised to enrol the applicant as an attorney on the roll that is kept by the Legal Practice Council in accordance to(sic) the provisions of section 24, read together with section 30 of the Legal Practice Act, 28 of 2014 as amended; and*
5. *Granting the applicant such further and/or alternative relief as this Honourable Court may deem fit”.*

[5] In the pre-amble to the counter-application, Respondent makes the following averments:

“JURISDICTION

158. *This Honourable Court retains jurisdiction to hear and determine the counter-application in these proceedings for the following reasons:*

158.1. *The counter-application arises directly from the same set of facts, and concerning the same order of 21 January 2025, as the applicant's rescission application.*

158.2. *Considerations of judicial economy, convenience, and finality favour the matter remaining before this court rather than initiating fresh proceedings.*

158.3. *The relief sought is both declaratory and mandatory, being consequential upon confirmation and enforcement of the admission order already granted by this court.*

158.4. *Having granted the admission order, this honourable court is best placed to confirm its validity and compel compliance therewith.*

158.5. *No prejudice will be suffered by the applicant should the counter-application be heard and determined in the same proceedings, particularly if the applicant's rescission application is dismissed in limine.*

159. *Accordingly, I respectfully seek an express order that, in the event of the applicant's rescission application being dismissed in limine, the court grant leave for the counter-application to be heard and determined immediately and without further formality".*

- [6] From the aforesaid averments as set out in the counter-application, it is clear that the adjudication of the Respondent's counter-application is conditional upon the Applicant's rescission application being dismissed.
- [7] The rescission application is essentially based on the Applicant's averment that the admission order was granted erroneously and contrary to the provisions of Section 24(2) of LPA, because the Respondent did not comply with the substantive legal requirements to be admitted, resulting therein that the admission order is invalid *ab initio* for want of compliance with the law. Applicant also submitted that the order was granted by error of law because the Respondent should not have been admitted as a legal practitioner, having failed to comply with the minimum requirements to be eligible for admission and enrolment as an attorney, because the Respondent did not complete the structured course work prescribed in Regulations 6(1)(a), 6(1)(b) and 6(10) at the time when she was admitted on 21 January 2025.
- [8] In the Respondent's opposing affidavit, Respondent admits that she failed to comply with certain of the admission requirements (which will be referred to *infra*) but avers that she subsequently followed the necessary steps to comply therewith. Respondent therefore seek condonation for non-compliance with those requirements at the time when the admission order was granted and seek confirmation of her admission by way of the relief claimed in the counter-application.
- [9] Respondent raised points *in limine* in the opposing affidavit, the first point being that the Respondent was not duly notified, or provided with an opportunity to be heard as required in terms of section 31(2) and 31(3) of the LPA before the Applicant refused to enrol the Respondent as an attorney after the admission order was granted. In the alternative Respondent raised as a point *in limine* the Applicant's non-compliance with section 3 of

the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) on the basis that the Applicant’s failure to enrol the Respondent as an attorney, pursuant to the admission order, constitutes “*administrative action*” as defined in section 1 of PAJA, which is reviewable. As a further point *in limine* the Respondent avers that the Applicant lacks *bona fides* in the rescission application and that there was an inordinate delay in launching the rescission application.

[10] From the aforesaid, it is therefore clear that the issues for determination are:

[10.1] Can the Respondent’s admitted non-compliance with the relevant provisions of LPA and/or regulations be condoned?

[10.2] Should the points *in limine* raised by Respondent be upheld?

[10.3] Should the Respondent’s counter-application be entertained?

[11] For purposes of determination of the aforesaid issues it is necessary to consider the relevant statutory provisions which informs the admission of legal practitioners, and the relevant background facts.

RELEVANT PROVISIONS OF THE LEGAL PRACTICE ACT 28 of 2014 AND REGULATIONS.

[12] The Legal Practice Act regulates the legal profession, in the public interest, *inter alia* with the stated objective to strengthen the independence of the legal profession and ensure

the accountability of the legal profession to the public. In section 3(g) of the LPA one of the stated objectives of the LPA is described as follows:

- “(g) *create a framework for the –*
- (i) development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal services by legal practitioners and candidate legal practitioners;*
 - (ii) regulation of the admission an enrolment of legal practitioners; and*
 - (iii) development of adequate training programmes for legal practitioners and candidate legal practitioners”.*

[13] Section 24(1) of LPA restrict legal practise to a person who is admitted to practise as such in terms of the LPA. Section 24(2) of the LPA enjoins the Court to admit to practice and authorise to be enrolled as legal practitioner, a person who satisfies the Court that he or she complies with certain requirements, relating to qualification, citizenship, residence, being a fit and proper person and having served a copy of the application for admission in a prescribed manner. The provisions of section 24(2) of the LPA are jurisdictional requisites for an order in terms of Section 24(1) of the LPA and reads thus:

- “(2) *The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary any person who, upon application, satisfies the court that he or she—*
- (a) is duly qualified as set out in section 26;*

(b) *is a –*

(i) *South African citizen; or*

(ii) *permanent resident in the Republic;*

(c) *is a fit and proper person to be so admitted; and*

(d) *has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules.”*

[14] The reference to “*qualified*” as set out in section 26 is a reference, not only to the requirement for the LLB degree as set out in section 26(1) of the LPA, but also a requirement to undergo practical vocational training requirements as a candidate legal practitioner prescribed by the Minister. The relevant part of section 26 of the LPA reads:

“26. ***Minimum qualifications and practical vocational training.—***

(1) *A person qualifies to be admitted and enrolled as a legal practitioner, if that person has—*

(a) *...*

(b) *...*

(c) *undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including –*

- (i) *community service as contemplated in section 29, and*
- (ii) *a legal practice management course for candidate legal practitioners who intend to practice as attorneys or as advocates referred to in section 34(2)(b), and*
- (d) *passed a competency-based examination or assessment for candidate legal practitioners as may be determined on the rules”.*

[15] The Minister promulgated regulations which prescribe the vocational training requirements referred to in section 26(1)(c) of the LPA (“the regulations”). The Minister promulgated the regulations in terms of section 109(1)(a) of LPA in Government Notice R921 published in Government Gazette 41879 of 31 August 2018 (as amended). The regulations materially differentiate between the practical vocational training that applies to attorneys on the one hand , and that of advocates on the other hand. Regulation 6, which provides for practical vocational training required for admission as an attorney , *inter alia* provides for the nature of a structured course work programme and reads:

“(10) *The programme of structured course work referred to in sub regulation (1)(a) and (b) must be standardized and uniform throughout the Republic and comprise the following modules:*

- (a) *constitutional practice;*
- (b) *professional legal ethics;*
- (c) *personal injury claims;*

- (d) *high court practice;*
- (e) *magistrate's court practice;*
- (f) *criminal court practice;*
- (g) *labour dispute resolution;*
- (h) *alternative dispute resolution;*
- (i) *attorneys' bookkeeping;*
- (j) *wills and estates;*
- (k) *matrimonial law;*
- (l) *legal costs;*
- (m) *drafting of contracts;*
- (n) *information and communication technology for practice, and associated aspects of cyber law; and*
- (o) *introduction to practice management".*

(11) *The training provided in terms of this regulation must be standardized by the Council in terms of norms and standards."*

[16] The modules of the compulsory course work required for the enrolment of advocates are set out in regulation 7(9) and reads:

“(9) The compulsory course work referred to in sub regulation (1) must be standardized and uniform and comprise the following modules:

- (a) for pupils intending to be admitted as advocates referred to in section 34(2)(b) of the Act, bookkeeping as contemplated in regulation 6(10)(i);*
- (b) advocacy skills, including trial and motion court proceedings and attendance of court proceedings;*
- (c) alternative dispute resolution;*
- (d) civil procedure;*
- (e) criminal procedure;*
- (f) professional conduct and legal ethics of advocates;*
- (g) legal writing and drafting;*
- (h) constitutional law and customary law; and*
- (i) information and communication technology for practice, and associated aspects of cyber law.*

(10) The training provided in terms of this regulation must be standardized by the Council in terms of norms and standards.”

- [17] Section 27 of the LPA provides that the LPC determine the minimum conditions and procedures for the registration and administration of practical vocational training and Rule 22(1) of the LPC Rules provides for a practical vocational training contract, the period of such contract, and the registration of such a contract.
- [18] From the reading of section 24(2) of the LPA as quoted *supra*, it is clear that the Court must be satisfied that an applicant is duly qualified as set out in section 26 which therefore clearly enjoins the Court to satisfy itself that the relevant vocational training and other admission requirements in terms of the LPA have been met by the Applicant who applies for admission as legal practitioner and enrolment as either an advocate or attorney. It is further clear from the reading of Regulation 6 and Regulation 7 as quoted *supra* that there is a substantial difference between the vocational training requirements for advocates and attorneys.
- [19] It is further important to note that the LPA does not contain any provision which provides a discretion to the Court to condone non-compliance with any of the requirements for admission, nor does it contain any provision that vocational training of a candidate under regulation 6 (attorneys) may be substituted for vocational training under regulation 7 (advocates), or *vice versa*.

RELEVANT BACKGROUND FACTS:

- [20] It is common cause that Respondent completed the notional hours of practical vocational training structured course work programme for pupil advocates as regulated in terms of Regulation 7 between May 2022 and August 2022. Shortly before completing the 400 notional hours of the practical vocational training structured course work programme for pupils, the Respondent entered into a practical vocational training contract with a firm of

attorneys for a period of 2 years, commencing on 1 August 2022 to 31 July 2024. Respondent completed the 24 months practical vocational training in terms of the contract and lodged an application on 24 October 2024 to be admitted as a legal practitioner and to be enrolled as an attorney, and that application was duly served on the Applicant ("the admission application").

- [21] In the founding affidavit of the admission application Respondent disclosed the fact that she did not complete the 400 notional hours of practical vocational structured course work programme provided for candidate attorneys in terms of Regulation 6. Respondent sought condonation for her failure to comply with Regulation 6. In support of the application for condonation, Respondent relied on the fact that she was enrolled and completed the 400 notional hours structured course work programme for pupil advocates as provided for in Regulation 7.
- [22] Applicant concluded that the Respondent did not comply with the admission requirements by virtue of the aforesaid facts. Correspondence ensued between the Applicant and Respondent and Applicant failed to provide the Respondent with a letter that is generally referred to as a "*letter of no objection*". A letter of no objection is issued by the LPC and filed on the court record in all applications for the admission of legal practitioners. That letter confirms to the court that the LPC is satisfied that the candidate has complied with all requirements, is a fit and proper person to be admitted, is duly qualified, and that there is no bar to being admitted by the court in terms of section 24(2) of LPA.
- [23] In the correspondence exchanged between Applicant and Respondent, the Respondent was specifically informed that she was required to complete the structured course work programme prescribed in terms of Regulations 6(1), 6(2) and 6(10). Respondent thereafter deposed to a supplementary founding affidavit and addressed certain other

non-related queries raised in email correspondence from the Applicant. However, Respondent failed to deal with the issue of her failure to comply with the aforesaid sub-regulations of Regulation 6. The application for admission was set down by Respondent for hearing on 28 November 2024, resulting in the Applicant addressing further correspondence to Respondent and requesting her to attend to the non-compliance issue, and to remove the application from the Court roll. Respondent failed to do so and proceeded to apply for admission on 28 November 2024.

- [24] When the application came before Justices Neukircher and Botsi-Thulare on 28 November 2024, that Full Court (not surprisingly) queried the absence of a letter of no objection, and thereupon removed the matter from the roll and ordered that the Respondent should explain why a letter of no objection was not issued by the Applicant. Thereafter and on 28 November the Respondent sent a further email to the Applicant, requesting reasons why the Applicant did not issue her with a letter of no objection. It must be added that this conduct of the Respondent seems strange, considering the fact that she was previously, on multiple occasions, advised by the Applicant of her non-compliance with Regulation 6 as set out *supra*. Further correspondence ensued between Applicant and the Respondent, wherein the Respondent persisted to request reasons for the Applicant's failure to issue a letter of no objection. Respondent was eventually formally informed by way of correspondence on 2 December 2024 that the Applicant will not issue the Respondent with a letter of no objection due to her failure to comply with Regulation 6 and requested the Respondent to withdraw her application for admission by virtue of her failure to comply. Notwithstanding, Respondent served a notice of set-down on the Applicant and the application was enrolled for hearing on 21 January 2025 and accordingly the matter proceeded to Court on 21 January 2025 in the absence of a letter of no objection. No explanation was provided why such a letter of no objection was not

provided by Applicant, notwithstanding the directive of the court of 28 November 2024 as referred to in paragraph [24] *supra*.

[25] From a reading of the respective affidavits, it becomes clear that the Court, when hearing the application on 21 January 2025, laboured under the wrong impression that a letter of no objection was indeed filed on record. In the Applicant's founding affidavit it is averred that counsel who appeared on behalf of the Respondent during the admission application on 21 January 2025 misled the presiding judges by failing to disclose the absence of a letter of no objection after it transpired that one of the presiding judges mistakenly remarked that there was in fact such a letter on the court record. For purposes of this judgment and for the reasons as set out *infra*, this Court will refrain from making a finding on this issue and in my considered view, it is not necessary for purposes of the present application to deal with that issue.

[26] The fact remains that, at the time when the admission order was granted, Respondent failed to comply with the requirements of Rule 6 as set out *supra*, and that order was granted in the absence of a letter of no objection, the Applicant having formally objected to the Respondent proceeding with that application. The court further did not issue any order in terms whereof the Respondent's non-compliance with Regulation 6 was condoned, and the order for admission was therefore granted contrary to the provisions of Section 24(2)(a) of the LPA because the jurisdictional requirements for such an order were absent. An order granted *ex parte*, based on a material mistake, may be set aside even if the mistake was not as a result any wilful conduct, as was held in *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E – 349C.

[27] Subsequently, after the admission order was granted, the Respondent complied with the outstanding requirements in terms of Regulation 6 and now avers in the counter-

application that she is duly qualified, having cured the previous *lacunae* in her application. By implication this fact constitutes an admission of non-compliance at the time when the admission order was granted.

CAN THE RESPONDENT'S NON-COMPLIANCE WITH REGULATION 6 BE CONDONED?

[28] The LPA contains no provision which empowers a court to condone non-compliance with the jurisdictional requirements set out in section 24(2) of LPA for purposes of making an order in terms of section 24(1) of the LPA. In the Respondent's answering affidavit and counter-application, the grounds upon which reliance is placed for the assertion that the Court has the requisite jurisdiction to grant condonation for non-compliance with Section 24(2) is not clear. It seems that reliance is placed on a general inherent discretion of the Court to grant condonation for non-compliance.

[29] A cornerstone of democracy is the principle that the rule of law must be upheld at all costs. The doctrine of the separation of powers is a fundamental principle found in the rule of law and duly recognised by the Constitution. In terms of the doctrine of the separation of powers the judiciary is not empowered to usurp the legislative powers of parliament.¹ It is only when such legislation offends the constitution that a court is empowered to declare legislation as unlawful.² The function of the judiciary is namely to apply the law and the law is *inter alia* sourced in legislation passed by parliament. It is only where a statute contains a specific provision which empowers a court to condone non-compliance with that provision of a statute, that such non-compliance may be condoned. Our case law provides instances where courts condoned non-compliance with

¹ *Glenister v President of the Republic of South Africa and Others 2009 (1) SA 287 (CC) at para [30] to [39].*

² *Vide: Glenister, supra.*

time periods prescribed in statutory provisions, but only where those courts found that a proper interpretation of the relevant statutory provision provides scope for condonation for non-compliance with that time period.³ The authorities are clear that any statutory requirement, absent a condonation clause, must be complied with and that non-compliance results in a nullity, as was held in *Dr JS Moroka Municipality and Others v Betram (Pty) Ltd* [2014] JOL 31209 (SCA) paragraphs 12 – 13 and authorities quoted therein.

- [30] *In casu* the non-compliance of the Respondent relates to a requirement for admission cast in statute in terms of section 24(2) of the LPA, and regulated by the Minister in terms of powers delegated to the Minister in terms of section 109 of the same statute. The purpose of such legislation and regulations are to regulate the admission of legal practitioners in order to give effect to the stated objects of the LPA. The admission requirements and more specifically the requirements as set out in Regulations 6 and 7 *supra* are intended to *inter alia* ensure that candidates who apply to be admitted as legal practitioners and be allowed to practice as either advocates or attorneys are suitably qualified and experienced. These admission requirements satisfy those objects of LPA which regulates the profession in the interest of the general public. Parliament legislated the LPA and delegated to the Minister the power to determine the admission requirements in relation to the practical vocational training requirements of candidates. This court cannot usurp the functions of parliament by effectively re-writing the LPA and/or encroach on the powers of the Minister by unilateral condonation of non-compliance with those requirements, as this court will then render compliance with the LPA subject to

³ *Ncala v Park Avenue Body Corporate and Others* (813/2023) [2026] ZASCA 16; [2026] 1 ALL SA 499 SCA (12 February 2026) at para [15] to [22] and authorities quoted therein.

judicial discretion. In my view, that will be a proverbial text-book example of non-compliance with the doctrine of the separation of powers, will constitute judicial overreach, and will undermine the rule of law.

- [31] In summary; In my view, on no interpretation of the LPA can it be found that a Court, when conducting an inquiry under section 24(2) of the LPA, will be entitled to condone non-compliance with any of the admission requirements legislated under Section 24(2) of LPA and/or any of the Regulations promulgated in terms thereof. The Respondent's condonation application can therefore not succeed. It further follows that the admission order, granted *ex parte* in the absence of the Applicant, was erroneously granted (*iustus error*) and the admission order therefore stands to be rescinded in terms of Rule 42.

RESPONDENT'S POINTS *IN LIMINE*

- [32] In my view the Respondent's points *in limine* can summarily be disposed of as follows:
- [32.1] The Respondent's first point *in limine* of non-compliance with the statutory pre-requisites of section 31 of LPA is ill-founded because the Respondent was not enrolled as a legal practitioner. It is a common cause fact that the Applicant refused to enrol the Respondent as a legal practitioner on the roll which is kept by the Applicant for the reasons as set out *supra*; Section 31 applies to the suspension or cancellation of enrolment of a legal practitioner and finds no application *in casu*.
- [32.2] Respondent's alternative point *in limine*, relying on section 3 of PAJA, is in my view also ill-founded. The Applicant's enrolment of the Respondent as a legal practitioner is not a "*administrative action*" or the exercise of a "*public function*",

but is as a result of its statutory duty bestowed in terms of section 30(2) of LPA, which follows on an order of court as is clear from section 30(1) of the LPA. In terms of section 30(2) of the LPA, this obligation to enrol bestowed on the LPC is subject to due compliance with the provisions of the LPA. The enrolment thus does not follow on a “decision” as defined in terms of chapter 1 of PAJA but follows on an order of court, which authorise the enrolment. In terms of that statutory power the Applicant is enjoined to seek and insist on compliance with the relevant statutory provisions and when the Applicant resorts to an application to Court to seek enforcement of the requirement provisions of LPA (as Applicant is doing *in casu*) the point as raised by Respondent in this regard of non-compliance with section 3 of PAJA does not apply. In any event, the application was served on Respondent, Respondent was allowed to file an opposing affidavit and there was compliance with the *audi alterem partem* principle.

[32.3] Insofar as Respondent submitted in heads of argument and in the answering affidavit that the Applicant is *mala fide*, that submission cannot be sustained. The Applicant is bestowed with a statutory mandate to oversee the legal profession and when the Applicant is aware of the admission of any person who did not comply with section 24(2) of the LPA, there is clearly a duty on the Applicant to take the necessary steps to ensure compliance with LPA and bring to the Court’s attention such relevant considerations which the Court may have to consider when admitting practitioners. Section 30(2) of the LPA place a clear duty on Applicant to ensure compliance with the LPA before enrolment.

[32.4] Respondent further raised the point that there was undue delay in the institution of the application for rescission. Applicant explains that there was a substantial

period of time when no communication was received from Respondent and the matter became alive again when Respondent insisted on compliance with the impugned order. There is no specified time period wherein an application to rescind an order of court, either under the common law or in terms of Rule 42, must be instituted and the authorities require institution without delay. In my view this court should not refrain from rescission of an order which was clearly erroneously granted, which may potentially set a dangerous precedent in future applications for admission of legal practitioners, and where the time period of delay did not cause any real prejudice to the Respondent. This court must jealously guard against admission of practitioners who do not comply with the LPA because the proper functioning of the court is dependant on duly qualified, suitably experienced, and fit and proper legal practitioners. It is thus in the interest of the legal profession as a whole, and this court, that the matter be adjudicated. To uphold this point in limine will defeat the provisions of the LPA.

RESPONDENT'S COUNTER APPLICATION

[33] On behalf of Respondent it was submitted that, even if the admission order is rescinded, this court should now admit the Respondent because the counter-application is now before this court and Respondent now complies with all the requirements for admission. In my view the Respondent's counter-application cannot be sustained in circumstances where the admission order is rescinded because the counter-application was launched contingent on the rescission application being dismissed, and that was the case the Applicant was called to meet in the counter-application. Furthermore, in terms of Section 24(2) of the LPA the court is *inter alia* required to be convinced that the applicant-candidate is a fit and proper person to be admitted and this issue is not canvassed in the counter-application in a manner

which enabled the Applicant to comment and assist the Court for purposes of that investigation. Nothing prevents Applicant now to apply for her admission and enrolment *de novo*, having completed the outstanding vocational work training requirements, and the LPC will have an opportunity to deal with the merits of that application and place before court any information which it deems relevant at that time, if it deems it necessary.

- [34] *In casu*, matters arose which may impact on the inquiry whether the Respondent is a fit and proper person to be admitted as a legal practitioner and be enrolled as an attorney. This court deem it not to be in the interest of the Respondent to make any findings on these matters, as those matters will most likely become relevant in future proceedings should the Respondent again apply to be admitted and enrolled. Those matters are *inter alia*:

[34.1] The fact that the Respondent was present in court when the confusion arose in relation to the absence of the certificate of no objection.

[34.2] The fact that the Respondent, instead of purging her non-compliance with Rule 6 and reapplying for her admission, elected to adopt a confrontational approach, accusing the Applicant of being *mala fide*, and launched a counter-application in circumstances where there is no merit in submitting that the Court has jurisdiction to condone non-compliance with the relevant statutory provisions.

COSTS

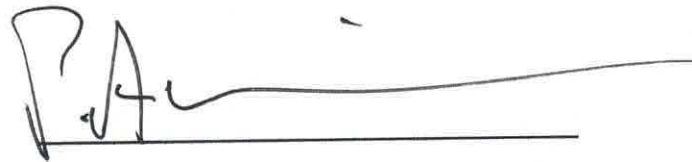
- [35] In my view a reasonable approach for the Respondent, who has now (on her own version) satisfied all the requirements to be admitted as a legal practitioner and to be enrolled as a practising attorney, would have been to have accepted the fact that she did not comply with the necessary statutory requirements and to have taken remedial steps prior to re-

enrolling the application for admission. Instead, the Respondent followed the conduct as referred to in paragraph [35.2] *supra*.

[36] In my view, there is no reason why the rule "*costs should follow the event*" should not apply.

I therefore propose the following order:

- 1 The order dated 21 January 2025 admitting the Respondent as legal practitioner and authorising the Applicant to enrol her on the roll of practising attorneys is rescinded.
- 2 The Respondent's application for condonation and counter-application is refused.
- 3 Respondent is ordered to pay the costs of the application and counter-application, taxed on Scale B.

A handwritten signature in black ink, appearing to read 'P A', followed by a long horizontal line extending to the right.

**P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA**

I agree with the proposed order:




J HOLLAND-MUTER
JUDGE OF THE GAUTENG DIVISION
PRETORIA

APPEARANCES

FOR APPLICANT:

S L Magardie

INSTRUCTED BY

Damons Magardie Richardson Attorney

FOR RESPONDENT:

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