



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

Not reportable

Case no: 2025-230711

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

TANDO ONGAMA DLABANTU

RESPONDENT

Neutral citation: *South African Legal Practice Council v Dlabantu* (2025-230711) [2026]
ZAFSHC 432 (10 September 2026)

Coram: LOUBSER and MOLITSOANE JJ

Heard: 4 June 2026

Delivered: 10 September 2026

Summary: Application for security for costs – attorney suspended from roll of legal practitioners – history of litigation between parties.

ORDER

1 The respondent is ordered to furnish security for the applicant's costs in the pending main review application in an amount to be set and determined by the Taxing Master of the court.

2 Such security must be furnished within 20 days after such determination.

3 The applicant is granted leave to apply to the court for an order striking out the said application with costs, in the event that the respondent fails to furnish security within the stipulated period.

4 The respondent is ordered to pay the costs of this application on the attorney and client scale, including the costs incurred by the applicant in the unopposed motion court on 9 October 2026.

JUDGMENT

Loubser J (Molitssoane J concurring)

[1] This is an application by the South African Legal Practice Council for an order that the respondent furnish security for its costs in the application filed by the respondent under the above case number 2025-230711, hereinafter called the main application. That application is a review application in terms of Uniform Court Rule 53 where the respondent seeks to have the decisions taken by the applicant to move for his suspension as a legal practitioner reviewed and set aside. It warrants mentioning that the main application for a review and the present application for security for costs were preceded by numerous other applications which caused the matter to become rather protracted and acrimonious, largely by the actions of the respondent.

[2] The history of the litigation between the applicant and the respondent is briefly as follows: On 8 November 2024 the respondent was suspended from the roll of legal practitioners by two Judges of this Division of the High Court. He was also ordered to pay the costs of the suspension application on an attorney and client scale. He was suspended on grounds of gross professional misconduct in that he practiced without a

fidelity fund certificate and in that he failed to pay the legal practitioners' annual fees and contributions to the fidelity fund.

[3] The respondent then launched an application for leave to appeal the suspension order, which application was dismissed on 28 February 2025 with costs on the attorney and client scale. Still dissatisfied, the respondent then approached the Supreme Court of Appeal on petition for leave to appeal the suspension order. This petition also was dismissed with costs on 20 June 2025 after it was opposed by the applicant.

[4] Soon thereafter, and on 14 July 2025 and 13 August 2025, the applicant proceeded to tax its bills of costs granted against the respondent in the matters referred to so far. The taxed allocators were subsequently transmitted to the respondent for payment, but he failed to pay same. Meanwhile, on 28 July 2025, the respondent went on to apply for a re-consideration of the High Court's dismissal of his application for leave to appeal. This application, however, was never issued, although the applicant had by then already incurred unnecessary costs. On 2 September 2025 the respondent lodged a new reconsideration application, and on 10 December 2025 the Supreme Court of Appeal granted the application. Before the reconsideration could take place, the respondent, out of the blue, launched an urgent application in the Gauteng Division of the High Court on 5 January 2026 to obtain orders for which he had already made applications in this Division and in the Supreme Court of Appeal. This urgent application, which was opposed by the applicant, was also dismissed with costs.

[5] Even before the launching of the Gauteng urgent application, the respondent brought the main rule 53 application for a review of the applicant's decisions in this Court on 26 November 2025. He also wanted his suspension to be set aside. This main application is still pending. It is the case for the applicant in the present application that security for its costs in the main application should now be ordered by the court in terms of Uniform Court Rule 47. The application is premised on the respondent's failure to settle the previous costs orders and his history of conducting vexatious and frivolous litigation against the applicant, it is stated in the founding affidavit. According to the applicant, the total of the costs orders already obtained against the respondent, amounts to the sum of R276 300, if not more than R300 000, which sum remains unpaid.

[6] Rule 47 mainly deals with the procedural aspects of demanding security for costs, and not with the grounds upon which a party is entitled to such security from the other

party. Consequently, recourse must be had to the common law. In terms of the common law, a court must be satisfied that the main proceedings are vexatious or reckless or amount to an abuse of the process of the court.¹

[7] As far as vexatious proceedings are concerned, the court has the inherent jurisdiction to prevent a vexatious action, and one of the ways of doing so, is to order the vexatious litigant to furnish security for costs. This power ought to be exercised only in exceptional circumstances. However, other factors should also be considered in applications for security for costs, such as the financial inability of the plaintiff to comply with an order of costs. In addition, an action is vexatious if it is one standing outside the region of probability altogether and is therefore incapable of succeeding. A court must be satisfied of this circumstance as a certainty.²

[8] In the present matter the pending review application of the respondent is clearly unsustainable. The decisions that form the subject matter of the review are decisions that predate that of the applicant to refer the facts to the court. On the facts before us there appears to be no prospects of those decisions being set aside on review, as they are not decisions in terms of PAJA and do not have an adverse legal effect on the respondent. This is so because a suspension or striking-off application constitutes *sui generis* disciplinary proceedings which becomes the court's proceedings. These proceedings are merely referred to the court by the applicant. When the applicant exercises its discretion to refer the alleged offending conduct to the court for the court to take a decision on whether the practitioner should be suspended or struck off as not being a fit and proper person to continue to practice as an attorney, the exercising of such discretion does not constitute a decision within the ambit of administrative action as defined in s 1 of the Promotion of Administrative Justice Act 3 of 2000.³

[9] In addition, the launching of the main application may even be regarded as a reckless exercise by the respondent, because at the time of the filing thereof, the reconsideration of the respondent's application for leave to appeal his suspension was still pending.

¹ *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* [2015] ZASCA 93; 2015 (5) SA 38 (SCA) para 16.

² *Fitchet v Fitchet* 1987 (1) 450 (ECD) at 455B-C.

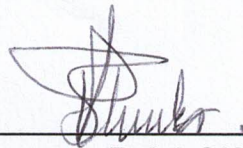
³ *Legal Practice Council v Motlhabani* 2021 JDR 1439 (NWM), *Law Society of the Northern Provinces v Adekeye and Another* 2018 JDR 1095 (GP) at [21]

[10] In his answering affidavit, the respondent raised a number of points *in limine*, which are all without any merit. He further contended that he is not unable to pay the taxed allocators, but that the applicant is not entitled to such payment since the decision on his application for leave to appeal or the appeal itself is still pending. The contention of the respondent is not persuasive. His petition for leave to appeal his suspension order was dismissed with costs on 20 June 2025 by the Supreme Court of Appeal. He should thereafter have settled his taxed allocators dated 14 July 2025 and 13 August 2025. Only on 2 September 2025 did the respondent lodge his reconsideration application. Consequently, there was sufficient time for the respondent to pay his costs liabilities to the applicant, which he did not do.

[11] On the other side of the spectrum, the applicant is duty-bound to protect public interest and the interest of all legal practitioners membered to it. It must consequently ensure that a suspended legal practitioner is not allowed to litigate without any concern for consequences pertaining to costs orders and to the detriment of all its legal practitioner members, as is the case in the present matter. It follows that the application ought to succeed with costs on a punitive scale.

[12] The following order is made:

- 1 The respondent is ordered to furnish security for the applicant's costs in the pending main review application in an amount to be set and determined by the Taxing Master of the court.
- 2 Such security must be furnished within 20 days after such determination.
- 3 The applicant is granted leave to apply to the court for an order striking out the said application with costs, in the event that the respondent fails to furnish security within the stipulated period.
- 4 The respondent is ordered to pay the costs of this application on the attorney and client scale, including the costs incurred by the applicant in the unopposed motion court on 9 October 2026.



P.J. LOUBSER
JUDGE OF THE HIGH COURT

I concur:



P. E. MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the applicant:

L J B Moeng

Instructed by:

P H H Badenhorst, Bloemfontein

For the respondent:

T O Dlabantu in person