

Summary

This was an application for leave to appeal to the Supreme Court of Appeal (“SCA”) from the Eastern Cape High Court Division, Grahamstown, against the judgement given within which the Applicant was struck from the roll of attorneys due to his misconduct (“the Application”). The main ground upon which the Applicant applied for leave to appeal was that, he was of the opinion that there was a reasonable prospect that another Court may find that (in exercising its discretion), the Court a quo failed to go about the enquiry correctly and misdirected itself to such a degree that intervention on appeal would be justified.

The Applicant alleged that the Court a quo should have found that there was no reason to suspect that the Applicant would, in the future, once again be found guilty of misconduct. As a result, the Applicant believed that an order suspending him from practising as an attorney for a period of time on certain unspecified conditions would have been a more appropriate sanction. The Law Society of the Cape of Good Hope brought an application to have the Applicant struck from the attorneys roll due to his misconduct. This application was launched in terms of Section 22 (1)(d) of the Attorneys Act 53 of 1979 (“the Act”) and it involve a three stage enquiry.

At first, the Court considered whether the alleged offending conduct had been established on a preponderance of probabilities. Consequently, this means that the first leg constitutes a factual enquiry. Secondly, the Court considered whether, the Applicant, at the discretion of the Court, was a fit and proper person to continue to practice as an attorney. Lastly, whether in all the circumstances the Applicant was to be removed from the roll of attorneys or whether an order suspending him from practice for a specified period would suffice. The SCA had limited power to interfere with a judgment of a lower court, unless that Court did not exercise its discretion judicially.

Held

The Court held that in order to obtain the relief sought, the Applicant was required to establish that the Court a quo failed to exercise its discretion judicially and that, as a result, the SCA could interfere therewith by substituting its value judgment for that of the Court a quo.

The Application stated that “The Court’s decision has not only deprived the applicant of his Constitutional right to pursue his trade but, worse still, it has stripped him of his dignity”. The Court held that this was a serious allegation against the court and if anything, it was the Applicant’s own fault that he has been struck off the roll and consequently of his dignity.

Moreover, it could never be said that the Applicant enjoyed a Constitutional right to pursue his trade dishonestly. His Constitutional right to pursue his trade is subject to his doing so in accordance with the Rules applicable to the attorney’s profession. Attorneys are required at all times to represent their clients fearlessly and ought never to balk at confronting injustice even where it may earn the displeasure of a Court. However, in doing so, attorneys need to abide strongly by the rules of practice and etiquette and ensure that they maintain a high standard of ethics in the profession. The application for leave to appeal was dismissed with costs.

Value

There are undoubtedly legal practitioners who exploit the system of contingency fee arrangements unreasonably. Such conduct cannot be countenanced, and steps should be taken to eradicate such practitioners from the profession

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