



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 19 December 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Hutchinson Wild v Legal Practice Council & Others (956/2023) [2024] ZASCA 180

(19 December 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the Gauteng Division of the High Court, Pretoria (the high court).

On 01 November 2018, the Legal Practice Act 28 of 2014 (the LPA) came into effect. In attempt to regulate the transition from a former Act partially in its place, (the Admission of Advocates Act 74 of 1964 (the AAA)), the Legal Practice Council (the LPC) issued an advisory note to this effect. Essentially, the advisory note made transitional arrangements, that applications for striking or suspension of members of the Bar Council /Societies of Advocates that were already instituted before operation of the LPA should be completed by the relevant Bar Council/Society at its own cost, which the LPC will accredit accordingly. That the applications falling after the operation of the Act shall be transferred to the LPC.

On 26 September 2017, the Eastern Cape Society of Advocates (the ECSA) issued an application in the Eastern Cape Division of the High Court seeking an order to have Ms Hutchinson Wild (the appellant) removed from the roll of Advocates following three judgements of two divisions of the high court, to which the ECSA contends warrants the appellant's removal. The appellant consequently brought an application on 10 January 2018 to

review the decision of the ECSA's to institute striking off proceedings against her. This application is still pending. Aligning with the ECSA, the second respondent in this appeal is: the LPC, as first respondent; the Bisho Society of Advocates, the third respondent; and the General Council of the Bar South Africa, the fourth respondent.

In May 2019, the appellant approached the high court (full court) with an application seeking to review and set aside the decision of the LPC to issue an advisory note. That the LPC withdraw the advisory note and notify all legal practitioners. In the alternative that high court declare the LPC having not taken any decisions in the advisory note and further notify all legal practitioners of the same. The appellant's contentions were that this decision by the LPC contradicts provisions of the LPA. That s 116(2) necessitates that all pending striking off applications be handed to the LPC. The high court dismissed the application, finding that the decision of the LPC was not reviewable as it did not affect any of the appellant's rights nor did it have direct, external legal effects. Emphasising that the LPA did not alter the common law position attached to the courts to hear application brought by relevant parties with legal standing, which is/was acknowledged by s 7(2) of the AAA. The high court further made it clear that such juristic persons such as the Bar Council/Societies did not need accreditation from the LPC as their standing is at common law that follows the inherent jurisdiction of the courts.

The SCA granted leave to the appellant, who asked the for a determination on two issues. First, if the LPC's decision is reviewable under the Promotion of Administrative Justice Act 3 of 2000. Second, if correctly interpreted, that s 116(2) of the LPA means the LPC must take over the striking application of the appellant from the ECSA. The LPC and the Bar Societies agree that in terms of s 116 (2), the ECSA is entitled to continue with the striking off proceedings against the appellant. The only difference is how this is to be achieved. The LPC's view is that this can be achieved through accreditation of and delegation to the ECSA. The Bar Societies on the other hand held the view that not only are they entitled to continue to bring applications to strike the names of advocates from the roll, but that s 116(2) authorises them to do so without the accreditation and delegation by LPC. They argued that upon proper interpretation of the LPA, they retained their right to bring applications before the high court regarding complaints of a disciplinary nature involving advocates, both before and after the coming into operation of the LPA. The appellant and the LPC dispute this submission.

The SCA found that the decision of the LPC was not reviewable on grounds similar to the high court's. On the second issue, the SCA held It may appear from the language of s 116, read in isolation from other sections in the LPA, that it seeks to strip the Bar Societies of their right to bring and continue with the applications either to suspend or to strike the names of advocates from the advocates' roll. However, it is trite that a provision in the act should not be read in isolation but read with the whole act.

The SCA pointed out at s 44(2) of the LPA, a section the Court emphasised must be read with s 116(2). Summarily, s 44(2) states that the LPA does not preclude '...a complainant or a legal practitioner, candidate legal practitioner or *juristic entity* from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct...'

The SCA clarified that the LPA does not detract from the position of the Bar Societies, who are still *custodes morum* over the profession of advocates, neither does the LPA intend to afford exclusive jurisdiction to the LPC in this regard. Furthermore, the restructuring brought about by the LPA did not change the common law as far as inherent powers of the courts over legal practitioners are concerned. Had there been an intention to bring about such a change, such would have been expressly stated. There is no provision in the LPA that clearly and unequivocally indicates an intention to alter the common law standing of the Bar Societies, arising from the inherent jurisdiction of the courts to consider striking-off applications. Instead, s 44(2) of the LPA confirms and affords rights to any person who has *locus standi* to apply to the high court 'for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner. . . '. The long-standing recognition by courts of the locus standi under the common law to apply for the striking off of advocates is not ousted by the LPA. On the contrary, it is preserved.

The appeal was dismissed with costs.

-----oOo-----