



## 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:** 12 June 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***

*Pitso and Others v Chabedi Molatoli Attorneys Incorporated* (Case no 420/2023) [2024] ZASCA 94 (12 June 2024)

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Today the Supreme Court of Appeal (SCA) upheld an appeal with costs, further setting aside and substituting the order of the Gauteng Division of the High Court, Pretoria (the high court). Lastly, the SCA dismissed the cross-appeal in the matter.

Mr Chabedi Molatoli (Mr Molatoli) is an attorney and the director of the respondent. The Molatoli and the deceased's family became close friends when the latter moved into the same residential estate where Mr Molatoli lives. Mr Molatoli gave legal advice to the deceased and assisted him in matters which involved the deceased and members of his family.

The deceased died intestate on 15 November 2021. Mr Molatoli assisted Mrs Pitso to report the estate to the fifth respondent, the Master of the High Court, Pretoria (the Master). On 18 November 2021, the respondent and Mrs Pitso concluded a written mandate and fee agreement (the agreement), in terms of which Mrs Pitso agreed to appoint the respondent as her agent should she be appointed as executrix of the deceased's estate (the estate). In terms of the agreement the respondent would be responsible for the administration of the estate and the drafting of the liquidation and distribution account, and would be entitled to charge a fee of 3.5% of the estate. On 30 December 2021, the Master issued a letter of executorship appointing Mrs Pitso as the executrix in the estate of the deceased.

On 1 April 2022, the respondent sent an interim invoice for services rendered to Mrs Pitso. She replied in an email sent on 3 April 2022 in which she stated that the respondent's first interim invoice was for more than 60% of the total funds available to finance the debts against the estate. She requested the respondent to provide a schedule of 'the amounts to be claimed pertaining to the entire process until closure of the estate account'. The respondent claimed to have replied to Mrs Pitso's email of 3 April 2022 through a letter explaining how the agreement had been entered into, however, that letter was not annexed to the founding affidavit.

On 28 April 2022, Mrs Pitso signed a document titled 'TERMINATION OF MANDATE', in terms of which she terminated the respondent's mandate and appointed Seleka Attorneys Incorporated (Seleka Attorneys), the sixth appellant, to administer the estate. On the same day, Seleka Attorneys sent the termination of mandate to the respondent. They informed the respondent that they would approach the Master to request that they be substituted in the place of the respondent. They requested the

respondent to furnish them with its final account and enquired as to when Mrs Pitso's file could be collected.

On 10 May 2022, the respondent launched an urgent application in the high court seeking an order: (a) declaring the termination of its mandate invalid; (b) that Mrs Pitso 'be interdicted from terminating the [respondent's] mandate, unless with the leave of the court on reasonable grounds'; (c) that the Master 'be ordered not to recognize the purported termination and appointment of Seleka Attorneys as agents of [Mrs Pitso]'; and (c) that Mrs Pitso be removed as executrix of the estate and she be ordered to return the letters of executorship to the Master. The application was initially struck from the high court's roll for lack of urgency and subsequently heard by Ndlovane AJ, who made an order declaring the termination of the respondent's mandate unlawful.

The issue before the SCA was whether Mrs Pitso was entitled to terminate the mandate of the Chabeli Molatoli Attorneys Incorporated, who was responsible for the administration of the deceased's estate.

The SCA reasoned that the application brought by the respondent in the high court was misconceived as, an applicant for a final interdict must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other remedy. The SCA was of the view that the respondent simply failed to make out a case for the relief sought and did not establish the requisites for the granting of a final interdict, more specifically a clear right and the absence of an adequate alternative remedy.

Lastly, the SCA held that the respondent is not without a remedy as, if Mrs Pitso's termination of the mandate prejudiced the respondent, its remedy lay in a claim for damages. In the result, the SCA made an order upholding the appeal with costs, setting aside and substituting the high court's order and dismissing the cross-appeal.

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