

THE HIGH COURT OF SOUTH AFRICA  
NORTH GAUTENG - PRETORIA

1/9/2010

CASE NO 77720/09

**LAW SOCIETY OF THE NORTHERN PROVINCES**  
FIRST APPLICANT

**THE SECRETARY OF THE LAW SOCIETY OF THE NORTHERN PROVINCES**  
SECOND APPLICANT

**V**

**DYKES, PETER ARTHUR**  
1<sup>ST</sup> RESPONDENT  
**RAMSAMY, CHERYL**  
2<sup>ND</sup> RESPONDENT

**SEGOGOBA, PHASUDI DOCTOR**  
3<sup>RD</sup> RESPONDENT

**VAN HEERDEN, JOHAN**  
4<sup>TH</sup> RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
DATE: 01/09/10
SIGNATURE: [Signature]

APPLICATION FOR LEAVE TO APPEAL

**JUDGMENT**

Sapire AJ

This is an application for leave to appeal. The parties are ad idem that should leave to appeal be granted that the Appeal should be directed to the Supreme court of appeal.

The respondents are the successful applicants in an application made by them for an order with costs, requiring the Third Respondent to issue to each of them, a Fidelity Certificate in the prescribed form, as contemplated in section 42 of the Attorneys Act 1979 for the period 1<sup>st</sup> January 2010 to 31<sup>st</sup> December 2010.

I heard the application as a matter of urgency during the during the December recess in 2009. I found for the applicants, and for reasons which I later furnished I ordered the Third Respondent to issue the certificates. In my judgment I incorrectly required the certificates to be issued by the Second Respondent. Little turns on this as the certificates were issued and remain current. Applications for certificates for next year will have to be made shortly.

The issues raised in the application relative to the relief sought by the applicants, have in this sense become matters of little practical importance.

What is of importance is the reasoning which brought me to the conclusion to which I came and which underlies the order which I made. The reasoning will be relevant to other applications for fidelity certificates made not only by the present respondents but also to possible others where the First respondent in the application has determined to apply to court for the suspension or striking off of an applicant for a fidelity certificate.

My understanding of the provisions of section 42 of the Attorney's Act is that the Third Respondent is obliged forthwith to accede to a properly presented application for a fidelity certificate and to issue the certificate applied for, if he, the secretary of the society concerned is satisfied that the applicant has discharged all his liabilities to the society in respect of his contribution and that he has complied with any other lawful requirement of the society. In the present case there was no evidence that the third Respondent was not so satisfied or that there was any reason for him not to be so satisfied..

The sole reason for withholding the certificates in the instant case was that the Society had determined to take steps against the attorneys in question giving rise to a still pending application tot his court for the striking off of the attorneys..

This reason I found to be invalid and contrary to the provisions of section in question..

It is only the court which can prevent an attorney from practicing by striking him from the roll or suspending him. By withholding a fidelity certificate so as to prevent an attorney from practicing on his own account merely because the society has decided to present an application for the striking off of that attorney the judgment of the court is pre-empted.. If there are reasons for the urgent and immediate restriction of the attorney, an appropriate and motivated application for the necessary relief can be presented to the court as a matter of urgency.

Because my views are, to some extent, in conflict with observations made in this court<sup>1</sup>, that certificates should not be issued to attorneys in respect of whom the Society has determined to take action with a view to suspension or striking off, and although the judgment in Viljoen<sup>2</sup> which was given subsequent to my judgment, is in accord with my views, I am in deference to, but unconvinced by, the contrary views, acceding to this application for leave to appeal.

The applicant is given leave to appeal to the Supreme Court of appeal against my judgment and order made consequent thereon in this matter, dated 30<sup>th</sup> April 2010. The costs of this application are to be costs in the appeal.

<sup>1</sup> Setshogoe v The Law Society of the Northern Provinces case No 28677/2008 and The Law Society of the Northern Provinces v Setshogoe case No 5273/2008 both unreported. Disapproved of and distinguished in

<sup>2</sup> Viljoen v The Law Society of the Northern Provinces case No 745/2010