

25/01/2018  
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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 13901/2013

In the matter between:

PRETORIA SOCIETY OF ADVOCATES

APPLICANT

and

MARGARET VAN ZYL

WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
25/1/2018 DATE	<i>[Signature]</i> SIGNATURE

RESPONDENT

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JUDGMENT- LEAVE TO APPEAL

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TLHAPI J

[1] The applicant seeks leave to appeal on grounds that the court erred in the following manner:

"1.1

In not finding that there were no exceptional circumstances which would warrant a suspension instead of a removal from the roll especially considering the fact that the respondent had made herself guilty of dishonesty in more than one respect on different occasions including the fact that she attempted to conceal her conduct, misled

her professional colleagues over a long period of time, and misled the Court under oath;

- 1.2 in finding that the respondent had shown remorse and in particular failed to find that her confessions and admissions were only made after she had no choice but to produce the full statements of the Blue Bean credit card which then revealed a different state of affairs than what she had falsely maintained all the time from the year 2011 up to March 2014;
- 1.3 In overemphasizing the personal circumstances of the respondent and should have found that the conduct of respondent, especially the fact that she committed perjury, demonstrated a serious inability to comply with the high standards and qualities of integrity and honesty expected from an advocate and that the Court could not have been satisfied that the respondent would be a fit and proper person to continue to practice as an advocate upon expiry of the period of suspension and that the appropriate sanction was removal from the roll;
- 1.4 the Court failed to apply the normal principles in application of this nature because the unique position of the applicant as *custos morum* of the profession and to award costs on the scale between attorney and client to the applicant."

[2] Counsel for the applicant argued that on the facts the court could not have been satisfied that a suspension instead of a removal from the roll was justified. Furthermore, that the high benchmark for a suspension was that there had to be exceptional circumstances present which called for a suspension, *Malan and Another v Law Society, Northern Province*, 2009 (1) 216 (SCA) at para also *Law Society of Cape of Good Hope v Peter* (2006) ZASCA, 37. There were also no facts present that the respondent would have been rehabilitated after the period of suspension, especially where the conduct complained about was that of dishonesty. He contended that the appropriate sanction in the circumstances should have been a striking from the roll of advocates.

[3] Counsel for the respondent argued that the application for leave to appeal was defective in that it had failed to deal with the issue whether the court had failed to exercise its discretion in as far as the sanction and costs order imposed was concerned, or that the discretion was exercised 'capriciously, in applying wrong principles of the law where bias played a role. In *Malan supra* and at para 13 the following was said:

"The discretion of the court of first instance ...is in the nature of a value judgment. In principle, a court of appeal is entitled to substitute its value judgment for that of the court of first instance if it disagrees. However, this court has held consistently that the discretion involved is a strict discretion, which means that a court of appeal may only interfere if the discretion was not judicially exercised.

*In General Council of the Bar of SA v Geach 2013 (2) SA 52 (SCA)*

Para 74: "the question that fell for decision was whether, upon an evaluation of all the material circumstances, which include the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of the honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public, the advocate should be barred for continuing to practice. The manner in which the court applied the various factors reflects that it considered some to point in one direction and others to point in the other direction and it evaluated each case accordingly. That is precisely what a proper exercise of its discretion required.

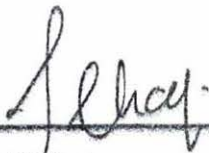
Para 75: "...It was the prerogative of that court to determine what factors should weigh with it one way or the other...and even whether no weight should be attached to any one of them at all. This court is not entitled to interfere only because it might have seen things differently"

[4] In my view the main important issue is to determine whether another court might find differently, and whether there are grounds for interfering with the discretion exercised by the court in its consideration of the facts and by not striking the respondent off the roll of advocates. The judgment in my view took all the factors into consideration and in particular the circumstances under which the misconduct took place with regard to the monies of the tea club and in its consideration of the sanction. The sanction given was directed more at her conduct thereafter and unless it is shown in the grounds of appeal that such exercise of discretion was capriciously exercised, I am of the view that another court shall not come to a different conclusion. In as far as the order of costs is concerned,

that the court did not follow what is normally the practice in such applications especially where attorneys are involved, by not awarding costs as prayed for by the applicant does not mean that such discretion was not properly exercised. It is for these reasons that the application for leave to appeal should be refused.

[5] In the result the following order is given.

1. The application for leave to appeal is dismissed with costs.



TLHAPI V.V, J

(JUDGE OF THE HIGH COURT)

I, agree



MAUMELA T A, J

(JUDGE OF THE HIGH COURT)