



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case No: **014453/2022**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHERS JUDGES: NO  
(3) REVISED



19 APRIL 2024

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**SIGNATURE**

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**DATE**

In the matter between:

**ITUMELENG SEKUKUNI**

Applicant

and

**THE LEGAL PRACTICE COUNCIL**

First Respondent

**YOLANDE JANSEN**

Second Respondent

*This judgment is prepared and authored by the Judge whose name is reflected as such, and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 19 April 2024.*

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**JUDGMENT**

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**RETIEF J**

## **INTRODUCTION**

[1] *“Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mine worker can become the head of the mine, that a child of a farm worker can become the president of a great nation. It is what we make out of what we have, not what we are given, that separates one person from another”*.<sup>1</sup>

[2] It is through the engine of personal development that the Applicant [Advocate Sekukuni] and the Second Respondent [Ms Jansen] are legal practitioners as defined in the Legal Practice Act [LPA].<sup>2</sup> Ms Jansen, a duly admitted and practising attorney and Advocate Sekukuni, a duly admitted and practising advocate.<sup>3</sup> Advocate Sekukuni is enrolled with the First Respondent, the Legal Practice Council [LPC] as a referral advocate.

[3] The LPC exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in the LPA. It is empowered in terms the LPA to regulate and to facilitate the competency examinations undertaken by legal practitioners. Ms Jansen has been appointed by the LPC as an examiner and as a marker of such examination answers sheets [script].

[4] Advocate Sekukuni wished to apply to the LPC for the conversion of her enrolment as a referral advocate to an advocate practising with a Fidelity Fund Certificate. Such conversion is provided for in terms of section 32(1)(b) of the LPA read with rule 32 and 37 of the LPC’s rules. Advocate Sekukuni when applying for such conversion must in terms of rule 32.2.1 of the LPC rules satisfy the LPC that she has knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the LPA and for compliance with the accounting rules published by the LPC from time to time.

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<sup>1</sup> By Nelson Rolihlahla Mandela.

<sup>2</sup> Section 1 Definition of Legal Practitioners in the Legal Practice Act 28 of 2014.

<sup>3</sup> In terms of section 3 of the Admission of Advocates Act 74 of 1964 [repealed].

[5] The LPC regards acceptable proof of compliance of rule 32.2.1 as the successful completion of competency based bookkeeping examination for candidates [examination].

[6] Advocate Sekukuni wrote the examination in March of 2022 but failed to pass the competency assessment. Ms Jansen marked her script. This application concerns the outcome and action of the parties as a result of the assessment results.

[7] Against this backdrop Advocate Sekukuni, acting in person, seeks final interdictory relief against and damages from the LPC and Ms Jansen jointly, as alleged joint wrongdoers. The thrust of the final interdictory relief is set out in a letter of demand she addressed to the LPC on 22 June 2022 [the demand]. The demand described the conduct of Ms Jansen which she regarded as the trigger validating the interdictory relief and her demand for damages.

[8] The demand did deal with her claim for damages from the LPC nor from Ms Jansen however, Advocate Sekukuni now in her relief claims damages in an undisclosed amount from both the LPC and Ms Jansen jointly.

[9] Both the LPC and Ms Jansen oppose the relief. It is regrettably noted that Ms Jansen elected not to file an answering affidavit in which she, as the examiner could have explained why Advocate Sekukuni did not attain the levels of competency in bookkeeping as required in terms of the LPA rules and how she exercised her discretion which is afforded her, *inter alia*, in terms of the memorandum. Instead, Ms Jansen resorted to filing a confirmatory affidavit confirming the facts, as they related to her, deposed to by Ms Janine Kim Myburgh [deponent] for the LPC. Regrettably her confirmatory affidavit refers to the deponent's founding papers and not the answering affidavit which was factually filed. This was clearly not her intention, in all likelihood a typographical error, but unexplained. This goes to the quality of the evidence placed before this Court.

[10] When considering the quality of the evidence, the tone and the style thereof to be used in the presentation of the evidence before this Court and then in the public domain, one will appreciate the value of the first enquiry which this Court made before the commencement of oral argument.

[11] The Court prior to hearing the merits of the application first wished both Counsel to address it on the non-compliance of uniform rule 41A by both parties. The non-compliance was apparent from the papers filed. It was clear from the response received by both Counsel that they were not acquainted with the content nor the application of this rule.

[12] In short, the material portion of uniform rule 41A for present purposes deals with a mandatory notice requirement. Such requirement to be filed at the commencement of and at the answer to any claim, including in application proceedings. Such notice, an enquiry request, enquiring from an opponent whether the dispute or part thereof can be ameliorated by them by the referral of such dispute to the process of mediation. Mediation, a confidential means for parties to resolve their own disputes. An advantageous prospect in this matter.

[13] As a result, this Court invited the parties to consider their position on whether such referral was possible, albeit in part. The matter stood down for a brief moment for that purpose. Unfortunately, the finer nuances and benefits of such referral and the rule not clearly understood. Advocate Sekukuni stated that she was too lenient with her requests notwithstanding, the matter could not be settled and Counsel for the LPC confirmed that settlement could not be reached. The object of standing the matter down was not for settlement purposes, but clearly to consider whether *via* rule 41A, and with the assistance of a trained third party, a mediator, a settlement may be achieved through the process of mediation. In consequence, the request and adjournment was not to ascertain whether the parties, in such a short space of time, could settle the matter but whether referral was possible. Notwithstanding, the matter then proceeded to oral argument.

[14] Procedurally, the LPC and Ms Jansen opposed the relief and have raised certain in *limine* points which must be dealt with. On a proper understanding of the

points themselves, it appears that they speak to the effectiveness of the interdictory relief [effectiveness enquiry] and to the manner in which Advocate Sekukuni brought her claim for damages, by way of application, having foreseen that a factual dispute could arise, which factually is precisely what occurred on the papers [damages claim].

[15] Advocate Sekukuni contended that the main reason for seeking the relief was ‘to right a wrong’ and to get her paper marked and to pass. She contended that it was not brought for monetary gain which she argued was evident from her claim for an undisclosed amount of damages. Nonetheless she contended at paragraph 19 of her replying affidavit that: *“It’s also important to state that quantifying the financial brunt this matter has had on my practice, the emotional toll this ordeal has personally cost me would result in the Respondents’ bankruptcy upon my succeeding in this application. Unlike the heartless Respondents, I don’t have sinister intentions to crass monetary aspirations. My aim is to pass the exam and earn my money the right way.”*

[16] The first wrong she alleges was perpetrated by Ms Jansen was when she purposively and with an *“intent to cause her financial prejudice and to delay her progress”* did not mark the answers she wrote in pencil in her script. The second wrong was that Ms Jansen dared write allegedly defamatory words: *“Potlood – nie gemerk”* on the cover page and the word *“Potlood?”* on the first and sixth page of her script. As for the LPC, they, having given credence to Ms Jansen’s actions were acting unjustly and trying to punish her. They as joint wrongdoers were liable. The unjust punishment by them both to smear her good reputation began, as described by Advocate Sekukuni in paragraph iii. of her founding papers when *“- I got admitted and my admission certificate was signed in a suggestive manner. I believe that is why Ms Jansen had the nerve to write what she did, referring to me as “Poor Ho Zero” or “Poor Ho Od” in translation to ‘PoHood’.*

[17] To right this wrong Advocate Sekukuni requests this Court to grant her the final interdictory relief against both the LPC and Ms Jansen based on certain

demands she made of the LPC and, to award her damages of an undisclosed amount.

[18] Of significance is the fact that Advocate Sekukuni in her replying affidavit attempted to expand her relief seeking further final interdictory relief against the LPC and Ms Jansen. The reason she proffered was as a result of the repeated arrogance of the deponent of the LPC's answering affidavit. This, Advocate Sekukuni did by way of incorporating additional relief referred to as "(E)" into the body of her replying affidavit. In "(E)" she prayed for the following:

*"(E) Considering the deponent's repeated arrogance regarding the applicant's alleged failure, applicant seeks in addition to the other prayers that the Honourable Court to compel the respondents to (i) give applicant signed affidavits confirming that no parts of the script were altered in any way by them and that they have no knowledge of the paper being altered by anyone, and (ii) that the memorandum provided in "G" is identical to the memorandum provided to all the other markers who marked the exam paper in question."*

[19] The significance in the relief (E) is certainly not based on the basis upon which it is sought and accordingly, at this stage, this Court will not venture to comment thereon. The critical issue is to comment and to highlight the significance of Advocate Sekukuni's appreciation of the fact that to protect the integrity of her answers in her script is paramount in that, it is the only way to present a true reflection of her competency. Such assurance of integrity and proper assessment of competency is not possible when answers are written in pencil for the foreseeability of possible tampering. This appears to be the same appreciation the LPC accepts and has foreseen by trying to contain the integrity of all candidates' scripts in exam conditions. In short, Advocate Sekukuni's appreciation of the integrity preservation of answers occurred when she made the demands in "(E)", *"...no parts of the script were altered in any way by them and that they have no knowledge of the paper being altered by anyone..."*. Logically then, no such assurances of integrity are possible and no such assurance available for an

examiner when faced with a script in which, answers are written in pencil. In consequence, answers in pencil are not an assurance of competency. This remains the situation no matter what reason proffered for writing any answer in pencil.

[20] Be that as it may, this Court still enquired from Advocate Sekukuni in direct and in unambiguous terms whether she sought leave to amend her relief or whether she was only moving for the relief set out in her notice of motion as filed on Caselines at 002-50. She confirmed that no amendment would be sought and accordingly no amendment granted. The application to be adjudicated upon the relief sought in the notice of motion filed on Caselines at 002-50.

[21] Before dealing with both the effectiveness enquiry and damages claim a consideration of the facts is required.

## **FACTS**

### **[22] Common cause facts**

22.1. On 16 March 2022, Advocate Sekukuni together with other candidates wrote Paper 4 of the competency-based examination, being legal practitioner's bookkeeping. The examination paper contained 4 (four) questions. The examination question paper contained a cover sheet which, *inter alia*, informed each candidate about the manner in which the paper was to be answered. This being the allotted times (both reading and writing times), where to write the answers in the script provided (on the right-hand side) and how to write the answers down in the script. The 'how' was in a form of an instruction captured under heading "Instruction" which stated: "*4. Please write only in pen on the right-hand pages*".

22.2. Advocate Sekukuni completed the information sheet on the cover page of her script by writing her examination number and her identity number. She wrote answers to all four questions but failed to write all

her answers in pen, writing some of her answers partly in pen and partly in pencil.

- 22.3. Ms Jansen did not mark the answers which were written in pencil and only marked the answers written in pen. She indicated the reason to the candidate by writing "*Potlood – nie gemerk*" on the cover page of the applicant's written script and at each question where the pencil inscriptions occurred, on the first and sixth page of the script, by writing the word followed by a question mark "*Potlood?*".
- 22.4. Advocate Sekukuni obtained an overall mark allocation of 16%, being the total mark for all the questions answered correctly in pen.
- 22.5. The LPC released all the examination results on their website, according to the candidate's examination number on 13 May 2022.
- 22.6. Advocate Sekukuni was unhappy with her results and requested to be provided with a copy of her script. This she initially did by email dated 3 May 2022. Having not received her script by 20 May 2022 she enquired once again on this date forwarding the same mail to many recipients. She too enquired again on the 23 May 2022.
- 22.7. In the request for a copy of the script from the LPC she stated that: "*I am not yet interested in a remark, I'd like to see the paper to verify why I received the mark I did and confirm that it was warranted*".
- 22.8. The LPC provided her with a copy of her script *via* email, the date of which is unknown however, from the facts prior to 10 June 2022.
- 22.9. On 10 June 2022, the applicant addressed an email to Maud of the LPC in which she stated the following:

"1. *Firstly, thanks for handling this matter and so promptly.*



2. *Eventually this person who marked my paper has an issue.*

(i) *What is the meaning of the term she wrote?*

(ii) *And why was my paper not marked completely?  
Because clearly had my paper been marked completely  
I would have passed.*

(iii) *This can't be legal. I am demanding that my paper be  
completely marked to assess if indeed I deserve that  
16%. Are you kidding me?"*

22.10. On 22 June 2022, Advocate Sekukuni delivered the demand by hand to the LPC, the content of which stated:

*"1. In May 2022, I queried and further received an email copy of the Bookkeeping examination paper that Ms Jansen marked and confirmed such with her signature, along with defamatory derogatory words written in red pen on three pages, including the top of the cover page. The paper was partially marked. As a result a mark of 16% was afforded to me and further published on the LPC website along with the results of others, and sent to me via text message. This was done despite the fact that I would have received a pass mark had she marked the entire paper. The aforementioned wrongful conduct was Ms Jansen's negligence, which the LPC further affirmed when I queried the appalling conduct. As a result of the LPC condoning her actions, I regard the LPC as a joint wrongdoer.*

*2. As a result of the aforementioned prejudice and defamation of my character, I suffered greatly and continue to. My practice, life, good reputation, and dignity are tainted because of this ordeal.*

3. *Apparently these actions are done with the intention to cause me financial prejudice and to delay my progress. Because had a pass mark been afforded to me, as I rightfully deserved, it would have allowed me to take further steps to practice for my own account.*
  
4. *I demand from the LPC (own emphasis) that all three terms written below be done within fourteen days from date of receipt of this letter:*
  - (i) *Mark or remark my question paper entirely, at your own cost.*
  
  - (ii) *Publish and send the correct mark on the same platform as the LPC had published and sent the previous mark.*
  
  - (iii) *Compel Mrs Jansen to email me an apology regarding her insolent conduct, the defamatory and derogatory words she dared to write on my paper.*
  
5. *Should the above not be complied with in fourteen days, legal action will be taken against you (the LPC- own emphases) and financial reparations sought.”*

22.11. On 27 June 2022, Mr G Van Staden, the director of the LPC addressed a letter in response to the demand [letter of response].

22.12. The letter of response informed Advocate Sekukuni that:

- 22.12.1. she, prior to the demand did not exercise the option to apply for a remark of her script;

- 22.12.2. a large portion of her answers were written in pencil and not in pen and they were not marked;
- 22.12.3. an announcement was made before the commencement of the examination which included instructions that all answers must be written in pen, as indicated on the exam cover sheet;
- 22.12.4. that answers written in pencil would not be marked, this being standard examination process;
- 22.12.5. the meaning of the word "*Potlood – nie gemerk*" means "*Pencil – not marked*" and "*Potlood?*" means "*Pencil?*";
- 22.12.6. the answers in pencil would not be marked.

[23] The remainder of the material facts remain in dispute.

[24] This Court deals with the in *limine* points raised and where applicable the relief and the merits.

### **POINTS IN LIMINE**

[25] This Court does ordinarily set the relief sought by an applicant in its judgment, but for clarity sake and to follow the reasoning it is imperative that this is done. Advocate Sekukuni in her notice of motion claims the following:

"1. *Compelling the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to:*

- (i) *Adhere to the three requests made on paragraph 5 of the Letter of Demand sent to the 1<sup>st</sup> Respondent attached hereto as 'attachment 3';*

(ii) *Pay costs of this application or and costs of suit in the event this application is defended; and*

(iii) *Jointly pay the Applicant undisclosed damages.”*

[26] In essence this Court is to deal with prayer 1(i) and 1(iii) as far as the merits are concerned as prayer 1(ii) speaks to costs.

[27] The effective enquiry concerns prayer 1(i) and the damages claim concerns prayer 1(ii).

*Effectiveness enquiry (prayer 1(i))*

[28] As this Court understands the thrust of the LPC and Ms Jansen’s attack is that Advocate Sekukuni wishes to compel them to comply with paragraph 5 of the demand when paragraph 5 of the demand does not deal with nor cater for any demands relied on and, in consequence this renders the prayer in its unamended form ineffective.

[29] The LPC’s contention is correct and no amendment was moved for. This was even after the error was highlighted by the LPC in their answering affidavit. As will appear, Advocate Sekukuni’s reply to the highlighted error was not to rectify by amendment as one would have anticipated but, she rather denied the allegation placing it in issue and in a confusing and contradictory manner stated: “*The relief sought is in paragraph 1(i) of applicant’s notice of motion and I also refer to paragraph 4 supra. I submit that I stand firmly with the relief stated above*”.

[30] Although it is clear that the use of the word ‘*supra*’ creates the confusion in context, the Court accepts that she was indeed trying to refer to was paragraph 4 of the demand by using the term “*supra*”. This inference is made by reading the reply as a whole and by the words “*-and I also refer to paragraph 4-*”. In consequence, the LPC and Ms Jansen’s argument is diluted. However, what is not diluted is the fact that the final interdictory relief sought in prayer 1(i) must still fail.

[31] At first blush, it must fail as against Ms Jansen, in that no demands, referred to in paragraph 4 or 5 of the demand are asked of Ms Jansen. The three demands were directed to the LPC in the demand attachment 3. In consequence, there is no need then to deal with the relief sought as against Ms Jansen in prayer 1(i).

[32] But what of the demands made of the LPC? The ineffectiveness lies not so much in the demand as such demands were factually made of them, but rather in the nature of the relief sought. Advocate Sekukuni confirmed that she seeks final interdictory relief. This too, is apparent by the wording of this prayer in that she requires the LPC to attend to the three listed demands to remedy a wrong.

[33] The difficulty Advocate Sekukuni faces is that her founding papers do not deal with the three requisites for the granting of a final interdict, all of which must be present namely that she must on a balance of probabilities establish a clear right, an injury actually committed or reasonably apprehended and the absence of any other satisfactory remedy available. The failure to deal with them was conceded by Advocate Sekukuni in argument and such requisites too, were not dealt with in her heads of argument. On this basis alone, the relief sought against the LPC at prayer 1(i) must fail.

[34] Having said that and appreciating how important this matter is to both parties, this Court, merely by way of explanation to ensure that the failure to succeed with prayer 1(i) against the LPC is understood by a reader, the Court attempts to deal with the veracity of Advocate Sekukuni's concession of her failure to deal with a requisite of final interdictory relief on the papers.

[35] A clear right put simply means a right clearly established which deserves protection in law. Substantively a mere allegation of an impairment to one's person, dignity or reputation by conduct of another does not establish a claim, as of right. Advocate Sekukuni still has to prove her claim against the LPC entitling her to any competent relief claimed against them. In fact, the merits of her claim which may or may not give rise to an enforceable right against the LPC, as an alleged joint

wrongdoer, must still be established. To go one step further, Advocate Sekukuni has also failed to request this Court to make a finding on the merits. Advocate Sekukuni appears to have made that finding herself and now wishes a Court to give it credence and to give it effect without proving her claim in law in all respects. The horse has been put before the cart.

[36] From the papers as could be anticipated material factual disputes arose with regards to the nature of Ms Jansen's conduct, the true and explained meaning of the inscribed words Potlood – *nie gemerk*" and "*Potlood?*" on the script, wrongful intent, intent to defame, knowledge of wrongfulness, publication, causation and damages, but to name a few. As a consequence a right claimed on that basis not justifiable and in consequence, no clear right is established.<sup>4</sup>

[37] Furthermore, even if a clear right was capable of being established, which it is not, Advocate Sekukuni has failed to demonstrate that the first demand made of the LPC is competent relief and therefore effective. In this regard the answer to the question whether the LPC is obligated to mark or remark her question paper entirely, at the LPC's cost.

*Does the LPC have a statutory obligation to mark or remark an examination paper in its entirety at its own cost?*

[38] According to Section 6(4) of the Act:

*"6(4) The Council must, in the rules, with regard to fees and charges which are payable to the Council determine –*

*(a) – (d)*

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<sup>4</sup> **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 624 (A) at 634 E-G.

*(b) The fees, or portion thereof, payable in respect of any examination conducted by the Council or on behalf of the Council; and*

*Any other fee or charge it considers necessary, as contemplated in this Act.”*

[39] In terms of the rules promulgated under the authority of Section 95(1) of the Act, and in part (ii) thereof, the aspect of fees and charges payable to the LPC are set out, in particular Rule 5.2 which reads as follows:

*“5.2 Every candidate entering any examination referred to in rule 5.1<sup>5</sup> who applies for a remark or a reassessment of his or her examination scripts shall pay a fee (own emphasis) *equal to twice the fee payable in terms of rule 5.1 for the examination in question; provided that if the candidate successfully passes the examination as a result of the remark or reassessment the fee paid shall be refunded* (own emphasis).”*

[40] Rule 7 deals with the failure to pay fees, levies and charges which clearly indicates that proceedings for the recovery of the default for the failure to pay a prescribed fee is the consequence.

[41] Applying Rule 5 to the facts, on 10 June 2022 the applicant, in an email addressed to Maud, presumably the Ms Ferreira referred to in paragraph (vii) of the Advocate Sekukuni founding papers in which she states to Maud at paragraph 2(iii):

*“2(iii) This can’t be legal. (Referring to her paper not being marked completely – own emphasis). I’m demanding that my paper be completely marked to assess if I indeed deserved that 16%. Are you kidding me?”*

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<sup>5</sup> See Rule 5.1.1 in respect of an examination referred to in terms of Section 26(1)(d) of the Act, namely a competency-based examination or assessment for candidate legal practitioners.

[42] Advocate Sekukuni fails to confirm that she indeed in accordance with the prescribed rules paid the fee in terms of Rule 5 prior to the demand, which would have been refundable had the remark and/or reassessment resulted in her pass mark.

[43] From 10 June up until 22 June 2022, no further evidence is provided in the founding papers that she indeed attempt to rectify the position when she stated in paragraph (viii): *“I attempted to rectify this matter and made several attempts to the respondent to remark the paper and rectify a wrong. Realizing that my query fell on deaf ears, I eventually sent the letter of demand on 22 July 2022, a copy of which is attached as attachment 3.”*

[44] Factually, from 10 June to 22 June 2022, no further evidence supports the allegation that several attempts were made to the LPC to remark the paper and rectify the wrong and more importantly that the applicant had complied with Rule 5.

[45] To this end the illustration and the relief at prayer1(i) as against the LPC too must fail.

*Damages claim (prayer 1(iii))*

[46] Advocate Sekukuni in prayer 1(iii) seeks to compel the LPC and Ms Jansen to jointly pay her an undisclosed amount of damages. As already dealt with above failure to factually establish a substantive claim nor to ask for judgment on such claim if proven results in the inevitable, no right to claim any amount has been established.

[47] In this regard the LPC and Ms Jansen’s attack and warning to Advocate Sekukuni that application proceedings are not designed for foreseeable factual disputes are correct. The consequences however unfortunate, on the material factual disparities inevitable.



[48] The difficulty the Court has is that Advocate Sekukuni was also warned of this consequence to which she unfortunately replied:

“57. Furthermore, how dare the deponent attack my legal training, claiming I don’t understand motion proceedings. If the deponent practiced real law instead of having documents written for her and merely placing her signature on them, she would know that there is nothing precluding me from using Application Proceedings instead of Action Proceedings. To educate the deponent on the matter, I’ll give her a quick lesson to demonstrate: If one elects to use Application Proceedings (wherein evidence is led in the affidavits), one can later use Action Proceedings (where evidence is led in trial instead of the pleadings). I choose the former because I want evidence to be on paper form so that I and the Honourable Court could see, as the Respondents have arrogantly demonstrated, the abuse of power, unreasonableness and vindictiveness. And like the Respondents I don’t need to overuse fancy latin jargon to make myself sound smarter than I am.”

[49] To be remind of the importance of collegiality and kindness lest we stumble is to remind ourselves of the words of Nelson R. Mandela speaking of education to which this Court alluded to in the preamble of this judgment, “- It is what we make out of what we have, not what we are given, that separates one person from another.”

[50] In order to bring clarity to Advocate Sekukuni’s claim for an “undisclosed damages” and her reference to the Simmonds, matter<sup>6</sup> as authority in support for the proposition that one is entitled not to claim and pleaded a specific amount claiming general damages in a defamation action, this Court deals with this issue briefly.

[51] The Plaintiff in the Simmonds matter in contrast, and in its particulars of claim did claim an amount. The Defendant wished to make a tender and in so doing required clarity on the pleaded allegations to determine what amount it was going

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<sup>6</sup> **Simmonds v White** [1980] 1 SA 412 (C) at par 758 and 759A.

to tender. The Defendant then caused a request in terms of uniform rule 21 to be served calling for further particulars. It was to these requests that the Learned Judge referred to. As a result of which the established principle in matters for defamation and where a party wishes to obtain further particulars to such claim in preparation for trial is spelt out. The plaintiff is under no obligation, in terms of the ambit of rule 21 to disclose any particulars (meaning further particular) regarding the Plaintiff's reputation to bolster a value for a tender. This in contrast, has nothing to do with authority for the ability to claim an undisclosed amount of damages. In fact the reverse is true, it is trite that a person claiming damages must set out his/her claim and prove it.

[52] In consequence Prayer 1(iii) too must fail. The *in limine* points succeeding. By dealing with the *in limine* points the Court too dealt with the core issues regarding the merits of the application as so, the application fails on the merits too.

### **COSTS**

[53] The Court is acutely aware that Advocate Sekukuni could have rewritten the examination several times since March 2022 as a result of which and on her version she would have passed and been the holder of a Fidelity Fund Certificate. Furthermore, that although she has alleged financial ruin no proof has been provided by way of her financial statements as a practising advocate nor her personal bank statements to illustrate her dire financial situation and need.

[54] Advocate Sekukuni too was warned of the procedural shortcomings apparent in her application yet, she failed to reflect on them, seek advice from more senior colleague to decide whether to remedy those areas before the matter was ventilated in open Court.

[55] Without knowing what the inscriptions written on her script meant and later being informed by the director of the LPC what they in fact did mean, she still persisted with the allegations.

[56] To her credit Advocate Sekukuni when asked by this Court if there were any allegations she would like to retract or not pursue on reflection, she did reflect. She informed this Court that she would have refrained from making the allegations of racism. The Court accepted this.

[57] In preparation the LPC legal representatives misread the nub of the matter and what was required. This was left for the Court to do. It too, failed to inform this Court that both the confirmatory affidavits had errors which needed to be addressed and which were not.

[58] The LPC is urged to consider its statutory mandate that in regulating the legal profession it too, must ensure that the development of legal minds through adequate training programmes for legal and candidate legal practitioner is of a standard which not only assists the legal practitioner but the Court in the administration of Justice. This will spill over and ensure the protection of the public and the public interest.

[59] Having regard to all the issues I exercise my discretion in favour that each party bears their own costs.

In consequence, the following order:

1. The Applicant's claim is dismissed.
2. Each party to bear their own costs.



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**L.A. RETIEF**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

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Matter heard:

08 March 2024

Date of judgment:

19 April 2024