THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU

Case. No. HCA 05 / 2024
Court *a quo* Case no. 139 / 2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

03 February 2025 .....
DATE SIGNATURE

In the matter between:

MEDIA 24 (PTY) LTD **FIRST APPELLANT**

RUSSEL MOLEFE **SECOND APPELLANT**

and

TSUNDZUKA KEVIN MALULEKE **RESPONDENT**

J U D G M E N T

RATSHIBVUMO DJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 12H00 on 03 February 2025.

[1] **Introduction.**

Central to this appeal is the online publication on News24 website published and hosted by the First Appellant on 21 January 2023 titled,

> ***"'Dishonest' Limpopo lawyer struck off the roll of advocates, but dismisses ruling as 'a joke'."***

The publication was authored by the Second Appellant, a freelance journalist who regularly does work for the First Appellant. Aggrieved by the "defamatory" nature of the headline and the content of the publication, the Respondent approached Limpopo Division of the High Court, Thohoyandou seeking various declaratory orders against the First and the Second Appellants (the Appellants).

[2] Amongst the orders granted by the High Court *per* Monene AJ (court *a quo*), was a declaration to the effect that "the averment made and published by the respondents (the Appellants) about the applicant (the Respondent) in media article dated 21 January 2023 stating that the applicant was a dishonest lawyer who had been struck off the roll of advocates is false and defamatory of the applicant." It is this order that the appeal is levelled against. The appeal is opposed by the Respondent.

[3] **Background.**

On 17 October 2017, the Polokwane Society of Advocates initiated an application to have the Respondent struck off the roll of advocates under case no. 7113/2017, at the Limpopo Division of the High Court, Polokwane. For a period in excess of five years as the application pended before the High Court, the Respondent did not file an answering affidavit in opposition of this application. He however filed several interlocutory applications that resulted in a delay into the hearing of the application. The matter was finally heard and decided by Rancho and Mashile JJ on 17 January 2023 who granted an order striking the Respondent off the roll of advocates.

[4] Although the Respondent was present in court when the matter was heard, he was later temporarily excused by the court to attend to his domestic chores. He however did not return, and the hearing proceeded in his absence. The court then ordered the removal of his name from the roll of advocates and indicated that the reasons would be furnished in due course. A judgment entailing full reasons for the order was handed down on 17 March 2023. Upon learning of the order handed down on 17 January 2023, the Respondent lodged his papers for the application for leave to appeal on 18 January 2023, thereby suspending the operation of the order striking him off the roll of advocates as envisaged by section 18(1) of the Superior Court Act, no. 10 of 2013 (the Superior Court Act).

[5] On 21 January 2023, News24 carried an article referred to in paragraph 1 above, the contents of which were as follows,

> "***Limpopo lawyer Kevin Maluleke has been struck of the roll of advocates.***
>
> ***The Limpopo Society of Advocates lodged the application, describing him as "dishonest" and "not fit" to practise.***
>
> ***Maluleke publicly accused judges of corruption.***

Limpopo lawyer Kevin Maluleke, who publicly levelled serious allegations against some judges, has been struck off the roll of advocates.

Maluleke was described as "dishonest" and someone who was "not fit" to practise in a 2017 affidavit submitted by the Law Society of the Northern Provinces (LSNP).

The affidavit, which was deposed by then Legal Practice Council chairperson Mamathung Charlotte Mahlatji, was submitted in support of an application by the Limpopo Society of Advocates - the Limpopo Bar - to have Maluleke struck off the roll of advocates.

In its papers, the Law Society listed a chronology of events, which dated back to 2005, when Maluleke first entered into a contract with a firm of attorneys for articles of clerkship.
According to the affidavit, he terminated the contract for unknown reasons before moving to another law firm on 17 January 2006. In August that year, his principal at the law firm initiated disciplinary proceedings against him for theft and intimidation. He was eventually dismissed.

Maluleke then tried to enter into a third contract of articles of clerkship with another law firm on 5 June 2007. However, during the screening process, it was found that he was "not a fit and proper person to enter the profession".

The LSNP then initiated disciplinary proceedings against him on the basis of his history, and he was found guilty of the charges against him in August 2007.

But that didn't stop him, the LSNP told the court. Maluleke applied to be admitted as an advocate at the Limpopo High Court in Thohoyandou, but concealed his previous misdemeanours. He was admitted on 6 December 2007.

In its papers, the LSNP argued that Maluleke might have committed perjury by concealing his history.

It submitted:

Had the court in Thohoyandou been aware of the true situation, the court would not have admitted Maluleke as an advocate, especially in view of the fact that the two practitioners had already opined at that stage that Maluleke was not a fit and proper person to be an attorney, and especially in view of the fact that the Law Society of the Northern Provinces had found Maluleke guilty of theft at that stage.

In addition, it mentioned complaints from members of the public and "spurious" public allegations Maluleke had made against Judge Madala Mphahlele and Judge President Ephraim Makgoba were eventually dismissed by the Judicial Services Commission (JSC).

Maluleke had also organised a march in which he accused the judiciary of being corrupt, with "no milligram of evidence ever presented of any corruption by the judiciary".

> *On Tuesday, Judges Natvarlal Ranchod and Brian Mashile ordered that Maluleke's name be struck from the roll of practising advocates by virtue of the stipulations of Section 7 of Act 74 of 1964. Their reasons are expected to be delivered later.*
>
> *When approached for comment, Maluleke first denied knowledge of the decision. However, after he was presented with the order, he said it was based on a law that had been repealed. He said he intended to appeal. "That whole thing is a joke. That is the long and short of it, and that joke is the subject of an appeal. The Supreme Court of Appeal or the ConCourt will just throw the court order away," Maluleke said.*[1]

[6] Following an engagement between the Respondent and the Appellants' legal representatives that yielded no desired outcome, the Respondent brought an application, seeking declaratory orders formulated as follows,

> "2.1 An order declaring the allegations made and/or published and/or circulated about the Applicant, to wit; Tsundzuko Kevin Maluleke, in the article titled " 'Dishonest' Limpopo lawyer struck off roll of advocates, but dismisses ruling as a joke," dated 21 January 202 3, to be defamatory, false and unlawful;
>
> 2.2 An order declaring that the First, Second and Third Respondents'[2] unlawful publication of the statement and/ or article dated 21 January 2023, stating or labelling, characterizing Tsundzuka Kevin Maluleke, as a 'Dishonest Limpopo Lawyer', was, and continues to be, unlawful;
>
> 2.3 The First, Second and Third Respondents are ordered to remove the article, titled "'Dishonest' Limpopo lawyer struck off the roll of advocates, but dismisses ruling as a joke dated 21 January 2023," within 24 hours, from all their media platforms under the direct control and supervision of the aforesaid First, Second and Third Respondents;
>
> 2.4 The First, Second and Third Respondents are ordered, within 24 hours from the granting of an order hereof, to publish a statement on all their media platforms, on which they unconditionally retract and apologize for the allegations made about the Applicant, to wit; Tsundzuka Kevin Maluleke in the statement and/or article dated 21 January 2023;

[1] This is the original publication which was the subject of the application. The publication was however amended and updated before the application was launched, but the changes were immaterial or irrelevant for purpose of this appeal.
[2] Before the court *a quo*, the respondents were cited as Media 24, News 24 and Russel Molefe and the First, Second and Third Respondents respectively.

2.5 The First, Second and Third Respondents be interdicted or restrained from publishing or further publishing any article or statement that says or implies that the Applicant, to wit; Tsundzuka Kevin Maluleke is a Dishonest Limpopo Lawyer;

2.6 Declaring the publication or statement dated 21 January 2023, made by the First, Second and Third Respondents about Tsundzuka Kevin Maluleke, to the effect that "Maluleke publicly accused judges of corruption, to be factually incorrect, inaccurate, misleading, defamatory and fake or false;

2.7 Declaring the publication or statement dated 21 January 2023, made by the First, Second and Third Respondents to the effect that the striking off application brought against Tsundzuka Kevin Maluleke by the Limpopo Society of Advocates was unopposed, to be factually incorrect, inaccurate, misleading, defamatory and fake or false;

2.8 Declaring the publication or statement dated 21 January 2023, made by the First, Second and Third Respondents to the effect that: " In August that year, his principal at the low firm initiated disciplinary proceedings against him for theft and intimidation," to be factually incorrect, inaccurate, misleading, deplorable and fake or false;

2.9 Declaring the publication or statement dated 21 January 2023, made by the First, Second and Third Respondents about the Applicant to the effect that: " In addition, it mentioned complaints from members of the public and "spurious" public allegations Maluleke had made against Judge Madala Mphahlele and Judge President Ephraim Makgoba, which were eventually dismissed by the Judicial Services Commission, to be factually incorrect, inaccurate, misleading, derogatory and fake or false;

2.10 Declaring the publication or statement dated 21 January 2023, made by the First, Second and Third Respondents about the Applicant, to the effect that: " Maluleke had also organized a march in which he accused the judiciary of being corrupt, with no "milligram of evidence ever presented of any corruption by the judiciary," to be factually incorrect, inaccurate, misleading, defamatory and fake or false;

2.11 The issue of damages suffered by the Applicant in respect of his reputation and good name, both in his personal and professional capacity, be referred for oral evidence.

2.12 Directing the First, Second and Third Respondents to bear the costs of this application on Attorney and client scale, including any Respondent who may elect to oppose this application."

[7] That application was initially brought on urgent basis, affording the Appellants two days to file answering affidavit, which they did. The matter was struck off the urgent roll for lack of urgency and was re-enrolled on a normal motion roll almost immediately. The court *a quo* handed down a judgment on 29 August 2023 in which several claims by the Respondent for declarators were dismissed. It however granted declarators in his favour in respect two claims as follows,

"94.2 It is declared that the averment made and published by the respondents about the applicant in a media article dated 21 January 2023 stating that the applicant was a dishonest lawyer who had been struck off the roll of advocates is false and defamatory of the applicant.

94.3 It is declared that the averment made and published by the respondents about the applicant in a media article dated 21 January 2023 stating or insinuating that the applicant had made spurious public allegations against "Judge Madala Mphahlele" and Judge President Ephraim Makgoba, and further that those

allegations the applicant had made were dismissed by the Judicial Services Commission is incorrect and defamatory of the applicant.

94.4 The respondents are jointly and severally, the one paying the other to be absolved, ordered to pay the applicant's costs arising from this application on a party and party scale."

[8] **Grounds of appeal.**

Aggrieved by the court *a quo*'s order as per paragraph 94.2 thereof, the Appellants now appeal against a finding to the effect that the averment made and published as per paragraph 5 above stating that the Respondent was a dishonest lawyer who had been struck off the roll of advocates is false and defamatory of him.

[9] It was submitted as the first ground of appeal that the court *a quo* erred in that it incorrectly applied the test applicable in defamation trial proceedings - that a defendant bears a full onus to prove their defence - instead of the test applicable in motion proceedings - that a respondent need only lay a sustainable evidentiary foundation that a defence would be available to be pursued at a trial (see *Herbal Zone (Pty) Ltd v lnfitech Technologies (Pty) Ltd* & *Others* [2017] 2 All SA 347 (SCA), para 38). It was further submitted that in the latter test, the court *a quo* should have found that the Appellants had laid a sustainable evidentiary foundation that the words *"'Dishonest' Limpopo lawyer struck off roll of advocates, but dismisses ruling* as 'a *joke'"* were covered by qualified privilege, being a substantially accurate and fair account of judicial proceedings, true and for the public benefit; and/or reasonable reportage in the circumstances.

[10] It was submitted as a second ground of appeal that the court *a quo* erred when it incorrectly refused to admit the supplementary answering affidavit tendered by the Appellants, in that it incorrectly found that the application was only brought on the day of the hearing (10 May 2023), when in fact it was filed on 04 April 2023 and was not opposed by the respondent until the day of the hearing. It was further submitted that it incorrectly failed to give adequate or any weight to the fact that the Appellants had only been afforded two court days to file the answering affidavit. It was also submitted that the court *a quo* erred in not finding that the evidence adduced in the affidavit was relevant to the defence of truth and public benefit, in that it proved that the respondent was not only alleged to have been dishonest, but had in fact been dishonest.

[11] The last ground of appeal was that the court *a quo* incorrectly found that the filing of an application for leave to appeal against the order removing the name of the Respondent from the roll of advocates, and resultant suspension of the operation of that order, rendered it inaccurate to report that he had been struck

from the roll. It was submitted that the court *a quo* should have found that the order striking the respondent from the roll was not a nullity, and could be reported on - only its operation or execution was suspended; but the order was not erased from existence.

[12] **False Publication Finding.**

The finding by the court *a quo*, to the effect that to report that the Respondent was struck off the roll of advocates, was false, should be read within the context of its judgment. It reached this conclusion because a day after an order striking the Respondent from the roll of advocates, he lodged an application for leave to appeal. To that end, the court *a quo* held,

> "Had the third respondent taken further steps to verify from the court file he would have had access to the leave to appeal application papers which were, on the evidence before me, already on file from the morning of 18 January 2023… Journalists are not lawyers, but court reporters or "so-called legal journalists" must have a fair grasp of the law or seek to acquaint themselves therewith as and when they report on aspects of law, that is, if they are to fairly report on court proceedings in a just manner… In that vein, I do not find it unreasonable to expect a court reporter to have some functional knowledge of the effect of an application for leave to appeal on a court order, or, at the very least, to try and find out what such an application means before posting a story. The objective reality is that as at 21 January 2023 when the article headlined as per the above averment was published, the applicant was not a struck off lawyer."[3]

[13] The court *a quo* based its reasoning on the provision of section 18(1) of the Superior Court Act which provides, "[S]ubject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the

[3] See paragraphs 73-75 of the court a quo's judgment on p. 623 of the paginated bundle.

application or appeal."[4] Now that there was an application for leave to appeal, the court *a quo* reasoned that such application did not only suspend the operation of the order made, but the order should be seen as having not taken place.

[14] The reasoning by the court *a quo* is wrong in various respects. First, it is not based on existing legal interpretation of the provisions above. Secondly it is not in line with general understanding of court orders or the reporting thereof and is illogical. If it is accepted, as the court *a quo* did, that the order to remove the name of an advocate from the roll is important and the public has a right to know about it, the question would be, when would it be so entitled to know about that order in cases such as this one where there was an application for leave to appeal.

[15] If this approach by the court *a quo* is the correct interpretation of the provision pertaining to suspension of court orders, it would entail that the publication of any court outcome (whether by media or not), would have to be barred, for as long as there is an application for leave to appeal since that application suspends the operation of the order. The publication would then only be sanctioned once there is an outcome on the application for leave to appeal or the appeal itself. If the appeal takes four or five years to finalise as some of them do, only then would members of the media report on court order made four or five years earlier. This approach defeats logic, especially for the media houses such as the First Appellant that report on current affairs when the news break.

[16] One wonders what more was expected to be published by the Appellants than to indicate that the order was the subject of appeal as the Respondent indicated when approached, which they did. Had the court proceedings been stream-lived, as it is commonly done in cases of public interest, they would have reflected no more than was published by the Appellants. Even in instances where the leave to appeal

[4] The court *a quo* erroneously referred to section 18(2) of the Superior Court Act instead of section 18(1) thereof.

is done on the same date as the order, those present in court do not get any lecture on the provisions of section 18(1) of the Superior Court Act. This case is no exception, although there was no such application on the date the order was made, which is the date on which the appellants reported on. As Kruger, Henriques *et* MASIPA JJ observed in *Maughan v Zuma and Another; Downer v Zuma and Another*,[5] application for leave to appeal does not render a judgment sought to be appealed, a nullity. Until such time as the judgment is set aside on appeal the orders made remain in place, it is merely the operation and execution thereof that has been suspended by the application for leave to appeal.

[17] It appears that Respondent was of the view that the Appellants had a duty to not only mention that the order was the subject of an appeal, but also to lecture their readers what appeal means or the provisions of section 18(1) of the Superior Court Act. There is no legal basis for this obligation on the part of the publishers. There is therefore no basis for finding that the Appellants had to go further than reporting what happened, teaching the readers about the meaning of lodging an application for leave to appeal, which meaning would not be found on record even if one was to peruse the file or inquire from those who were present in court. The right of the public to hear of the court outcomes when they unfold, cannot be limited or delayed until the appeal outcome, all because the operation of the order is suspended.

[18] In *The Citizen 1978 (Pty) Ltd and Others v McBride*[6] the Constitutional Court had to deal with a worse scenario involving the expungement of previous conviction through amnesty which restores a convict to a full civic status. At paragraphs 72 & 96, the apex court said,

> "72. This points to the conclusion that section 20(10) expunges the previous conviction, and reinstates the former convict to full civic status, so that he or she is

[5] (12770/22P; 13062/22P) [2023] ZAKZPHC 75 (3 August 2023) at para 40.
[6] (CCT 23/10) [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) (8 April 2011).

> deemed never to have been convicted. But it does no more. It does not render untrue the fact that the perpetrator was convicted, or expunge the deed that led to his or her conviction. Those remain historically true. The statute does not address these facts of history, nor does it attempt to mute their description. It does not stifle the language that may accurately describe the events that led to the conviction, nor does it censor the terms that may truthfully be applied to the facts, though the law of defamation does.
>
> 96. It may be useful to pause and summarise. The Reconciliation Act did not render it untrue that Mr McBride committed murder. And it did not prohibit frank public discussion of his act as "murder". Nor did it proscribe his being described as a "criminal". The Citizen's comments, deriving from the fact of Mr McBride's deed, were based on adequate exposition of the pertinent facts."

[19] There is nothing in the record of application for leave to appeal or section 18(1) of the Superior Court Act that suggests that the court did not make an order striking the Respondent's name from the list of advocates or that such an order was reversed. I also struggle to understand as to how the order to remove a name of an advocate can be construed to be defamatory if one was made. Presuming this to be defamatory, I am of a view that the court *a quo* misdirected itself in not finding that the publication of this statement was a qualified privilege in that it was published in a fair and accurate report of the proceedings of a court, and without malice or improper motive.[7] No malice was alleged or proved by the Respondent in the first place. On this misdirection alone, the appeal is bound to succeed.

[20] The aspect of qualified privilege was repeated in another ground of appeal involving the applicable test. Given the finding we reach on this ground, we deem it unnecessary to deal with the other ground of appeal challenging the test applied by the court *a quo*.

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[7] See *Benson v Robinson and Co (Pty) Ltd* 1967 1 SA 420(A). See also *Zillie v Johnson and Another* 1984 (2) SA 186 (W) on publication of public interest.

[21] **The refusal to admit supplementary answering affidavit.**

There was an application in terms of Rule 6(5)(e) of the Uniform Rules of the High Court, to admit a supplementary answering affidavit, which was refused by the court *a quo*. It is trite that in motion proceedings, parties are entitled to exchange three sets of affidavits, being the founding affidavit, the answering affidavit and the replying affidavit. The filing of any further affidavit is within the discretion of the court, which must be exercised judiciously.

[22] In refusing this application, the court *a quo* held that the evidence sought to be introduced was irrelevant as it related to the Respondent's conduct prior to the alleged defamatory article being penned and after it was penned, which evidence did not inform the penning of the article. It further reasoned that the application to admit the supplementary answering affidavit, which was voluminous, was brought late, that is, on the date the main application was to be heard. In light of this, it was of the view that it would be unfair to expect the Respondent to answer such bulky documentation in the morning of the date of hearing of the main application. It also held that postponing the application was not in the best interest of the parties.[8]

[23] The first reason for refusing this application is irreconcilable with what the court *a quo* held elsewhere in its judgment when it said, "it is trite that truth and public interest is another defence available to a respondent or defendant in a defamation claim. In this regard various decisions such as *SA Associated Newspapers LTD v Yutar*[9] and *National Media Limited and Others v Bogoshi*[10] are apposite. It is also true, as argued by the respondents *in casu*, that *evidence*

[8] See paragraph 12 of the court *a quo's* judgment on p. 597 of the paginated bundle.
[9] 1967 3 SA 454 (A).
[10] [1998] 4 ALL SA 347.

which proves the truthfulness of allegedly defamatory statements may be utilized to sustain a defence even if such evidence became available post the publication. See *Yutar* at paragraphs 457 to 458."[11][My emphasis]. Of relevance to this court is that the court *a quo* was aware that evidence which proves the truthfulness of an alleged defamatory statement may be utilized to sustain a defence even if such evidence became available post the publication and that the evidence the Appellants wanted to present in their application, was to prove this aspect.

[24] It seems the court *a quo* got its facts wrong in concluding that the application to admit supplementary answering affidavit was brought on the date the main application was to be heard, which was 10 May 2023. The Registrar's date stamp on the notice of motion clearly reflects the date of 04 April 2023. The affidavit in support of this application was dated 03 April 2023. The Appellants allege that the notice to bring this application was served on the Respondent's legal representatives together with the affidavit in support thereof, about a month in advance, and they did not indicate that the applications would be opposed. The Respondent is said to have indicated that this notice was made available to him by his legal representatives. This appears to be what the court *a quo* meant when it said "it had administratively not been brought to his attention."

[25] Whatever was meant in referring to these mishaps as "administrative" it cannot, in all fairness be blamed on the Appellants but the Respondent's own legal team. Equally, whatever prejudice that could have been suffered by the Respondent in postponing the application to afford him time to respond to the new application brought in terms of Rule 6(5)(e), when compared with the prejudice suffered by the Appellants when the main application was heard without allowing the supplementary answering affidavit, it is imbalanced given the innocence of the

[11] See paragraph 40 of the court *a quo*'s judgment on p. 609 of the paginated bundle.

Appellants in the debacle that resulted in that notice not being brought to his attention.

[26] Any prejudice suffered could have been ameliorated by the necessary cost order, if so required, than to forge and exclude the admission of supplementary affidavit the contents of which were bound to change the course of the application. The Respondent's prejudice culminating in him scribing the answering affidavit on the date of the hearing of the main application, can only be laid on the doorsteps of his legal representatives who were served with the papers on time, and did nothing to notify their client. Any attempt to ameliorate this prejudice, at the expense of the Appellants was misdirected. It turns out to be a sharpened dagger that sadly ended the life of the innocent, while those responsible for the mishap sharpened it and stood by, innocently shouting how their inaction would prejudice their own.

[27] The court *a quo* was aware of the factors that should be considered on evaluating if a case has been made for the admission of the said affidavit, although it seems it only paid a lip service to them. Erasmus Commentary on the Rules of the High Court lists these factors as follows,

> "*(a)* The reason why the evidence was not produced timeously.
>
> *(b)* The degree of materiality of the evidence.
>
> *(c)* The possibility that it may have been shaped to 'relieve the pinch of the shoe'.
>
> *(d)* The balance of prejudice to the applicant if the application is refused and the prejudice to the respondent if it is granted.
>
> *(e)* The stage which the particular litigation has reached. Where judgment has been reserved after all the evidence has been heard and, before judgment is delivered, an applicant applies for leave to place further evidence before the court, it may well be that he will have a greater burden because of factors such as the increased possibility of prejudice to the respondent, the need for finality, and the undesirability of a reconsideration of the whole case, and perhaps also the convenience of the court.

(f) The 'healing balm' of an appropriate order as to costs.

(g) The general need for finality in judicial proceedings.

(h) The appropriateness, or otherwise, in all the circumstances, of visiting the fault of the attorney upon the head of his client. If the court is satisfied on these points it will generally incline towards allowing the affidavits to be filed."[12]

[28] In *Pangbourne Properties Ltd v Pulse Moving and another*[13], Wepener J quoted with approval from *Hart and Another v Nelson*[14] where Horn AJ (as he then was) stated as follows at 374G – 375F:

> "Where strict adherence to a Rule of court would give rise to a substantial injustice the court will grant relief which will prevent such an injustice. The court has an inherent power to grant relief where an insistence upon the exact compliance with a Rule of court would result in substantial injustice to one of the parties. (*Moluele and Others v Deschatelets NO* 1950 (2) SA 670 (T) at 676; also *Matyeka v Kaaber* 1960 (4) SA 900 (T).) It is inconceivable that a court would give effect to the Rule where the implication of such a Rule would clearly cause undue hardship to one party and present an unfair advantage to the other. In *Ncoweni v Bezuidenhout* 1927 CPD 130 Gardener JP remarked as follows at 130:
>
> The Rules of procedure of this Court are devised for the purpose of administering justice and not of hampering it, and where the Rules are deficient I shall go so far as I can in granting orders which would help to further the administration of justice."

[29] The Appellants indicated that when they filed the answering affidavit, they were given only two days as the matter was under urgent court roll. The position remained like that even after the application was enrolled on the normal motion roll. Had the matter not been initiated as urgent application, the Appellants would have had a fair opportunity to gather all the necessary information before penning

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[12] See *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (W) at 604A–F; *M&G Media Ltd v President of the Republic of South Africa* 2013 (3) SA 591 (GNP) at 599I–600E.

[13] 2013 (3) SA 140 (GSJ at 147H-148A.

[14] 2000 (4) SA 368 (E).

down the answering affidavit. Although the affidavit sought to be admitted was bulky, the Respondent would not have been prejudiced in reading it as it was the same information that had been at his disposal in the application that laid pending for over five years in a matter between him and the Polokwane Society of Advocates – the application that culminated in the order removing his name from the roll of advocates. The supplementary answering affidavit contained the evidence presented by the Polokwane Society of Advocates to the court that struck the name of the Respondent from the roll of advocates. In the circumstances, I am of a firm view that the court *a quo* exercised its discretion in an overly strict adherence to the rules, leaving out justice bleeding, and this should be corrected.

[30] Had the court *a quo* admitted the supplementary answering affidavit, it would have shown that the Respondent was not only alleged to have been dishonest, but he was found to be dishonest when he was convicted of theft in a disciplinary hearing conducted by his erstwhile principal, when he served articles as a candidate attorney. It would have also shown that when he was later admitted as an advocate, he concealed this information by declaring that he had not been found guilty or dismissed in a disciplinary hearing at his workplace. Had the court *a quo* admitted the supplementary answering affidavit, it would have realised that the Respondent did not oppose the application by the Polokwane Society of Advocates leading up to the order in which his name was struck off the roll of advocates, as he did not file an answering affidavit.[15]

[15] See *Society of Advocates of Polokwane v Maluleke and Another* (7113/2017) [2023] ZALMPPHC 13 (17 March 2023) at paragraph 31.

[31] In opposing the admission of the supplementary answering affidavit, the Respondent chose not to respond to any of the averments in the Appellants' founding affidavit, just as he chose to say nothing thereto in the application to have his name struck off the roll. It is standard that even when a party opposes the admission of an affidavit into record, he/she would proceed and answer the contents thereof *ad seriatim*, in case the court would admit the said affidavit. Unsurprisingly, the Respondent chose not to. As the court *a quo* correctly opined, it would not have been wise to answer the damning allegations in this application when choosing not to do so where it matters, where the order for his name to be removed from the roll of advocates was sought. With the admission of the supplementary answering affidavit, the contents thereof would also go uncontested. For this reason, the appeal is bound to succeed.

[32] For the aforesaid reasons, the following order is made.

32.1 The appeal is upheld with costs, including the costs of the application for leave to appeal.

32.2 Paragraph 94.2 of the court *a quo*'s order is set aside and substituted with the following:

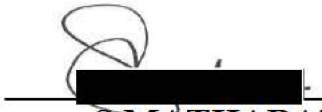
The Applicant's claim for a declarator in respect of the first averment in the article published by the Respondents about the Applicant on 21 January 2023 fails.

TV RATSHIBVUMO
DEPUTY JUDGE PRESIDENT

I agree.

A VAN WYK
ACTING JUDGE OF THE HIGH COURT

I agree.



S MATHABATHE
ACTING JUDGE OF THE HIGH COURT

FOR THE APPELLANT:	**ADV B WINKS**
INSTRUCTED BY:	**WILLEM DE KLERK ATTORNEYS** **C/O: COXWELL, STEYN, VISE & NAUDE INC ATTORNEYS** **THOHOYANDOU**
FOR THE RESPONDENT:	**IN PERSON**
RESPONDENT'S ATTORNEYS:	**NTSAKO PHYLLIS MBIZA ATTORNEYS** **C/O: SIPHIWE MATENZHE ATTORNEYS**

THOHOYANDOU

DATE HEARD : 02 DECEMBER 2024

JUDGMENT DELIVERED : 03 FEBRUARY 2025