



**CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case CCT 74/16

In the matter between:

**RALPH PATRICK NDLEVE**

Applicant

and

**PRETORIA SOCIETY OF ADVOCATES**

Respondent

**Neutral citation:** *Ndleve v Pretoria Society of Advocates* [2016] ZACC 29

**Coram:** Mogoeng CJ, Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mbha AJ, Mhlantla J, Musi AJ and Zondo J

**Judgment:** The Court (unanimous)

**Decided on:** 1 September 2016

**Summary:** Striking advocate from the roll of advocates — unethical professional conduct in continued practice — duty of Society of Advocates to courts and public

---

**ORDER**

---

The following order is made:

The application for leave to appeal is dismissed.

---

## JUDGMENT

---

THE COURT (Mogoeng CJ, Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mbha AJ, Mhlantla J, Musi AJ and Zondo J):

[1] At issue is an order striking a legal practitioner off the roll of advocates for malpractice and theft. This is a further application in a series of five the applicant, Mr Ndleve, has filed in this Court over the last twelve months. In the present application, lodged on 8 April 2016, he seeks an order declaring proceedings in the High Court of South Africa, Gauteng Division, Pretoria (High Court) invalid and setting aside its judgment and order of 12 June 2013, including an order requiring him to pay the costs. In the alternative, he seeks leave to appeal against that judgment to either the Supreme Court of Appeal or the Full Court of the High Court.

[2] The High Court admitted him as an advocate on 18 February 2002. Between 2006 and 2013, the Pretoria Society of Advocates (Society) received at least six complaints against him.<sup>1</sup> These detailed his practices of taking instructions directly from lay clients without being briefed by an attorney, taking money from clients without the intervention of an attorney and stealing money intended for his clients' creditors.<sup>2</sup> The Society applied to the High Court for an order striking his name off the roll of advocates. On 12 June 2013, the High Court (Ebersohn AJ; De Vos J concurring) granted the order with costs.<sup>3</sup>

---

<sup>1</sup> *Pretoria Society of Advocates v Ralph Patrick Ndleve*, unreported judgment of the High Court of South Africa, Gauteng Division, Pretoria, Case No. 36147/2009 (26 April 2013) (High Court Judgment) at para 5.

<sup>2</sup> *Id* at paras 23-5. See also *Ndleve v Director of Public Prosecutions North Gauteng, Pretoria* [2013] ZAGPPHC 108.

<sup>3</sup> High Court Judgment above n 1 at para 47.

[3] The applicant then sought leave to appeal from the High Court. He submitted that he was denied a fair hearing and that a failure of justice had occurred as the Court had refused to allow him to file a supplementary affidavit. The Society had not afforded him an opportunity to call and cross-examine witnesses before approaching the High Court to strike him off. On 8 July 2015, the High Court, noting that the applicant had confessed to stealing money from his clients,<sup>4</sup> and that he was not entitled to submit a supplementary affidavit or to call and cross-examine witnesses before the proceedings to strike him from the roll,<sup>5</sup> refused leave to appeal with costs.<sup>6</sup> The applicant then sought leave to appeal from the Supreme Court of Appeal. It likewise refused leave with costs.

[4] He then approached this Court. The present application is not his first. Over the last year, he filed five applications with this Court targeting the High Court's striking-off decision of 12 June 2013. The previous four applications were all dismissed as bearing no prospects of success.<sup>7</sup>

[5] The present application is no different. The only distinction between it and the one immediately preceding it<sup>8</sup> is that the applicant now seeks, as alternative relief, an order granting him leave to appeal to the Supreme Court of Appeal or the Full Court. In substance, the founding affidavit makes only minor additions to encompass this additional relief. It is otherwise identical to Case No. 35/16. Now, the alternative relief sought is the same relief the applicant sought in Case No. 185/15. That was his first application to this Court.

---

<sup>4</sup> *Ralph Patrick Ndleve v Pretoria Society of Advocates; In re Pretoria Society of Advocates v Ralph Patrick Ndleve* [2015] ZAGPPHC 448 (High Court Leave to Appeal Judgment) at para 4.

<sup>5</sup> Id at para 11.

<sup>6</sup> Id at para 14.

<sup>7</sup> *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 185/15 (29 October 2015); *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 213/15 (26 November 2015); *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 240/15 (3 February 2016); and *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 35/16 (4 May 2016).

<sup>8</sup> *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 35/16 (4 May 2016).

[6] The applicant submits that the transcript of his initial hearing before the High Court, which was not provided in Case No. 185/15, and which he now attaches, demonstrates an infringement of his rights and should impel the Court to reconsider his case. But this is nonsensical. The applicant provided this transcript in Case No. 240/15 and Case No. 35/16, both of which this Court dismissed. So there is nothing new.

[7] The only conclusion that can be drawn is that the applicant is peppering this Court with repeated applications, each entirely devoid of merit, simply to stave off the coming into effect of the order striking him from the roll of advocates. This conduct cannot be countenanced.

[8] The Court notes with deep concern that the applicant appears to have continued practising as an advocate despite being struck from the roll of advocates. This appears from an entirely unrelated application lodged in this Court in 2015.<sup>9</sup> There, the applicant was mentioned as counsel for the accused before the lower courts. The founding affidavit in that case makes clear that the applicant was still practising as an advocate on 4 October 2013 – four months after his striking off.

[9] While the general rule is that an order is suspended while under appeal, the applicant filed an application for leave to appeal in the High Court only on 7 February 2014.<sup>10</sup> The *dies* for filing his application for leave to appeal in the High Court had expired by no later than 4 July 2013.<sup>11</sup> This means that at the time he was actively representing two accused in October 2013, there was an enforceable order of the High Court striking him from the roll. His appearance was unlawful and imperilled the fairness of the criminal proceedings in which he appeared.

---

<sup>9</sup> *Stance Selomane and Others v S*, order of the Constitutional Court, Case No. 231/15 (30 March 2016).

<sup>10</sup> High Court Leave to Appeal Judgment above n 4 at para 2.

<sup>11</sup> Uniform Rules of Court, rule 49(1)(b).

[10] These are grave matters. The applicant’s continued practice as an advocate after this Court dismissed his first application for leave to appeal borders on contempt of court. It is certainly unethical professional conduct. It is especially troubling since the purpose of a court’s order striking an advocate from the roll is not simply punishment. It is rather “the protection of the public”.<sup>12</sup>

[11] Compounding this concern, the Court notes that as at 4 August 2016 the roll of advocates listed the applicant as an advocate.<sup>13</sup>

[12] What is to be done? It seems obvious. On 23 November 2015, the Society directed a letter to this Court regarding Mr Ndleve’s second application. The Society noted that the Court’s rules do not provide for multiple applications for leave to appeal in the same matter and requested directions from the Court on how to approach the second application as the Society did “not want to incur further and unnecessary expenses”. On 23 February 2016, the Society again wrote to this Court in relation to Mr Ndleve’s fourth application requesting additional directions, as the Society believed that the applicant had exhausted all remedies in his previous applications.

[13] The litigant that successfully obtained an order striking the applicant from the roll of advocates is the Society. It is for the Society to take appropriate steps in the High Court to stop the applicant’s unavailing stream of litigation – and to stop him appearing in courts on behalf of accused and other parties. The Society owes that duty to the Court, and to the public.<sup>14</sup> Advising the Society on its role in the practical steps it must take to fulfil this duty is not something the Court can undertake. This Court’s Registrar is directed to draw this judgment and order to the attention of the Society

---

<sup>12</sup> *Van der Berg v General Council of the Bar of South Africa* [2007] ZASCA 16; [2007] 2 All SA 499 (SCA).

<sup>13</sup> Department of Justice and Constitutional Development, “High Court Advocates Roll, Pretoria” (4 August 2016) at page 25.

<sup>14</sup> See *Solomon v Law Society of the Cape of Good Hope* 25 [1934] AD 401 (“Law Society protects the interests of the public in its dealings with attorneys”), cited in *Law Society of the Northern Provinces v Mabando* [2011] ZASCA 122; [2011] 4 All SA 238 (SCA); *Pretoria Balieraad v Beyers* 1966 (1) SA 112 (T) (Law Society has a statutory duty to uphold ethical practice even in relation to non-members); and *Law Society of the Northern Provinces v Sonntag* [2011] ZASCA 204; 2012 (1) SA 372 (SCA) (Law Society has a “statutory duty to approach the court” to have an attorney who is not a fit and proper person struck off the roll).

and to the attention of the Judge President of the Gauteng Division of the High Court of South Africa.

*Order*

[14] The following order is made:

The application for leave to appeal is dismissed.