



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (459/22) [2023] ZASCA 112 (26 July 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal with no order as to costs against the decision of the Limpopo Division of the High Court, Polokwane (per Naude AJ) to dismiss an urgent application for the suspension of various legal practitioners, brought by the statutory regulator, the Limpopo Provincial Council of the South African Legal Practice Council (the Limpopo LPC), the appellant. The first respondent was Chueu Incorporated Attorneys (the firm), the law firm of which the second to eighth respondents were directors.

The Limpopo LPC sought to suspend the second to eighth respondents from practising as attorneys for a period of 18 months pending the finalisation of a disciplinary enquiry into the alleged misconduct of the respondents, and certain interim relief related thereto. The high court, by agreement, granted an order of suspension against the second respondent for a period of 12 months, pending the finalisation of investigations into his conduct and disciplinary proceedings against him. It dismissed the application for the suspension of the other directors.

At the heart of the appeal was the question of the liability of all the directors of a law firm, when the financial misconduct had allegedly been committed by only one of the directors.

The facts of the matter were as follows. The firm specialised in personal injury matters. The second respondent was the 'managing director' of the firm and in charge of the overall finances of the firm. During the relevant period, the third to eighth respondents were directors of the firm, operating at different locations. During 2020/2021, various complaints from members of the public were received by the Limpopo LPC. These were to the effect that the firm had represented them in litigation against the Road Accident Fund (the RAF), collected monies from the RAF, but failed to pay it over; that the firm had failed to account for monies claimed and received from the RAF; and, had failed to respond to communications or deal properly with clients' instructions in this regard. A complaint was received from the RAF that it had erroneously made a duplicate payment resulting in an overpayment to the firm, which monies, instead of being repaid to the RAF, had been appropriated. The matter was referred to the Investigating Committee of the Limpopo LPC, which found evidence of numerous breaches of the code of conduct. On receipt of the trust accounts of the firm, the Limpopo LPC concluded that there was a substantial trust deficit of at least R25 825 699.89. This pointed *prima facie* to a misappropriation of trust funds. As a result, the Limpopo LPC launched an urgent application for the suspension of all the directors of the firm. It founded its jurisdiction in terms of s 43 and s 44(1) of the Legal Practice Act 28 of 2014 (the LPA).

The SCA found, firstly, that a point *in limine* raised by the respondents that the chairperson of the Limpopo LPC had no authority to launch the proceedings was incorrectly upheld by the high court. The SCA found that the finding by the high court on the question of authority was at odds with the principle set out in *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA); [2005] 2 All SA 108 (SCA).

Regarding the merits, the SCA found that once a legal practitioner was appointed as a director, they bore full responsibility for the finances of the firm. Abdication of responsibilities did not absolve legal practitioners of their duties. It had been emphasised over the years that legal practitioners could not escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account.

The SCA found further that, on the facts, there was no doubt that the offending conduct in respect of the financial affairs of the firm had been established. On their own version, the third to eighth respondents, by playing no role whatsoever in respect of the accounting and financial affairs of the firm, were in dereliction of their duties as directors. The Limpopo LPC established a *prima facie*, if not clear right, because there was no refutation of the firm's misdeeds, only a denial of responsibility for those misdeeds, which, in respect of directors, was no defence at all. The balance of convenience favoured the regulatory body, which had no alternative means of performing its oversight functions. Thus, sufficient facts had been shown to justify an interim suspension.

With regard to costs, the SCA was of the view that the Limpopo LPC was not entitled to the costs of the appeal. This was because the unnecessarily voluminous record filed by the appellant did not comply with the rules of the SCA, and thus called for a special costs order.

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