



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Samuels v South African Legal Practice Council (formerly Law Society of the Northern Provinces)

(1112/2021) [2022] ZASCA 175 (07 December 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court) that struck off the appellant, Mr Paulos Lepekola Samuels, from the roll of attorneys. The order of the high court was set aside and the striking-off application was referred back to the high court for determination by a differently constituted bench. Despite his success on appeal, the appellant was ordered to pay the costs of the appeal.

The first judgment per Mothle JA held that it would have dismissed the appeal and confirm as correct the high court's order striking Mr Samuels' name from the roll of attorneys with a punitive costs order. The first judgment had found that Mr Samuels' assertion that the high court infringed his right to be heard, was factually and legally incorrect. The judgment found that there was no application for postponement before the high court to because Mr Samuels had not delivered a substantive application as required in terms of the court's rule 6. He had also inexplicably failed to utilize any of the alternative options outlined in the Chief Justice's and the Judge President's Directives concerning litigation procedures during hard lockdown. Relying on the decision of the SCA in *Minister of Land Affairs and Agriculture v D & F Wevell Trust* 2008 (2) SA 184 (SCA), the minority judgment also found that on appeal in the SCA, Mr Samuels did not state his factual allegations on affidavit; instead he

made factual allegations in the notice of appeal and heads of argument. The SCA thus had no evidence on affidavit. Instead, the majority reached its conclusion from inferences drawn out of the content of a collection of affidavits, inserted by Mr Samuels in the record, against established authority. The minority judgment further found that the attempts by the high court to set up a virtual meeting on the eve of the hearing could not materialise, because Mr Samuels' attorney did not have access to an email address necessary to provide the link to the virtual meeting.

On 15 October 2019 the striking-off application was set down for hearing on the opposed motion court roll of 30 April 2020. In the interim, and following the outbreak of Covid-19 pandemic, on 16 March 2020 the President declared a state of national disaster for a period of 21 days which commenced on 26 March 2020 at 23h59. The initial period of 21 days was later extended to 30 April 2020. Every person was confined to their place of residence, except, inter alia, those performing essential services. All non-essential services were suspended.

The applicable Court Practice Directive, specifically issued to deal with the state of national disaster requirements during alert level 5, stated that insofar as opposed applications were concerned 'the parties shall endeavour to reach an agreement dispensing with oral argument and shall to that end, inform the judicial officer presiding in the matter of their decision'. The parties did not consider this option and no such agreement was reached. In an email addressed to the Law Society's attorneys a few days before the hearing, the appellant sought a postponement, explaining the reasons for the request. In response, he was advised to bring a substantive application for the postponement sought. However, the appellant requested a postponement in an email addressed to the senior judge's secretary, in which he explained his predicament. The secretary replied that the learned judge insisted on a substantive application. Such application was not filed. Two days before the hearing the appellant's representative was informed per email that the opposed application would be heard on the Zoom virtual platform. It is common cause that neither party was invited to a virtual hearing and that the presiding judges decided to adjudicate the application 'on the papers' without reference to the parties. In his judgment (in which Windell AJA concurred) Daffue AJA found that the appellant's right to a fair hearing in terms of s 34 of the Constitution had been violated. In addition, there was no compliance with section 32 of the Superior Courts Act 10 of 2013. The learned judge further held that the high court erred in relying on section 19(a) of the Superior Courts Act in the absence of an agreement between the parties. He reasoned that section 19(a) of the Superior Courts Act empowers appellate courts to dispose of appeals without hearing oral argument only in circumstances where the litigants themselves have agreed to this. He went on to hold that the high court's finding that the

appellant chose not to appear and present his case before the court' is clearly wrong because the appellant could not present his case on any virtual platform as no link was established and no invitation was extended to the parties.

After citing several judgments, in particular *Morudi and Others v NC Housing Services and Development Co Ltd and Others*, a judgment of the Constitutional Court, the second judgment held that the high court had committed a serious irregularity which resulted in a failure of justice. Therefore, it would be wrong to adjudicate the appeal on its merits. Consequently, the appeal had to be upheld and the application referred back to the high court for determination by a differently constituted bench.

In his judgment, Petse AP held that the high court's breach of the appellant's fair hearing right as enshrined in section 34 of the Constitution was dispositive of the appeal. Thus, he found that it was unnecessary to canvass the other issues dealt with in the second judgment.

Siwendu AJA concurred in the judgment of Petse AP. However, she felt constrained to write separately because, in her view, the appellant employed a carefully orchestrated strategy to delay the resolution of the dispute with the Legal Practice Council, despite the duty placed on him as an officer of the court to cooperate with its investigations. She emphasised that the subject and content of the right enshrined in section 34 is not one-sided but has a concomitant obligation on the party invoking section 34.