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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Legal Practitioners' Fidelity Fund Board v Rodney Adrian Love and Another (Case no 179/2025) [2026] ZASCA 120 (17 September 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal by the Legal Practitioners' Fidelity Fund Board (the Fund) against a judgment of the Gauteng Division of the High Court, Johannesburg (the High Court). The High Court's order was set aside and replaced with an order dismissing the application with costs, calculated in accordance with Scale C in rule 69(7) of the Uniform Rules of Court. The Fund was awarded its costs of appeal, including the costs of two counsel where so employed.

The dispute arose from a claim by the first respondent, Mr Rodney Adrian Love, for reimbursement of R10 million under the former Attorneys Act 53 of 1979 (the Act). In April 2011, Mr Love deposited R10 million into the trust account of a firm of attorneys, Turnbull and Associates Incorporated (Turnbull), at the instance of Mr Alberto Pavoncelli, for the purchase of shares in Sword Fern Trading (Pty) Ltd, of which Mr Pavoncelli was a director. The transaction did not proceed and the R10 million was stolen.

By August 2011, Mr Love had become concerned about the transaction and sought repayment of his money. On 15 May 2012, Mr Pavoncelli gave him a written undertaking to repay the R10 million. By November 2012, Mr Love had obtained statements from Turnbull's trust account showing that the R10 million had been withdrawn from that account during 2011. In an affidavit signed on 28 November 2012, he stated that Mr Pavoncelli had personally misappropriated the R10 million.

On 7 October 2013, Mr Love submitted a claim to the Fund for repayment of the R10 million. The Fund rejected the claim because Mr Love had not given written notice within three months after becoming aware of the theft, as required by s 48(1)*(a)* of the Act. Mr Love maintained that he became aware of the theft only on 2 September 2013, when he obtained bank statements of Turnbull's business account. He thereafter instituted both review proceedings and an action against the Fund.

In the action, the question whether the claim had been submitted within the prescribed three-month period ultimately reached the SCA. On 14 April 2021, the SCA held that Mr Love knew, by no later than 28 November 2012, that the R10 million had been misappropriated. It held that there was no need for him to wait until September 2013, when he obtained Turnbull's business-account statements, before notifying the Fund of his claim. The SCA accordingly upheld the Fund's special plea that the claim had been submitted out of time.

When the action failed, Mr Love proceeded with the review application, in which he sought an order that the period for lodging his claim be extended, in terms of s 48(2) of the Act. The High Court held that the Fund had failed to exercise that discretion. It found that Mr Love had become subjectively aware of the theft only on 2 September 2013 and substituted its own decision for that of the Fund by extending the time for lodging the claim to 7 October 2013.

The central issue before the SCA was whether the High Court was entitled, in deciding the s 48(2) question, to make a factual finding that contradicted the SCA's earlier final determination of when Mr Love became aware of the theft.

The SCA held that it was not. The court found that the High Court's conclusion that Mr Love did not know before 2 September 2013 that his funds had been stolen, directly contradicted the SCA's earlier finding that he knew, at the latest by 28 November 2012, that the R10 million had been misappropriated. That earlier factual finding was binding on the High Court and could not be reopened merely by characterising the later review as the exercise of a discretion under s 48(2).

The SCA held that, by making the substitution order on a factual basis inconsistent with a binding appellate judgment, the High Court had acted unlawfully. Judicial power is constrained by the principle of legality, and a lower court is bound by the doctrine of *stare decisis* to follow the decisions of higher courts. The court emphasised that permitting a litigant to obtain, through a different procedural route, a result founded on a factual proposition already rejected by the SCA would undermine the authority and finality of appellate judgments.

The SCA further held that the review application was barred by the common law once-and-for-all rule. Mr Love's claim against the Fund arose from a single cause of action, namely the alleged liability of the Fund to reimburse him for the R10 million loss. When he instituted his action, he was aware that the Fund had rejected the claim because it was lodged out of time and that in the review, he had sought an extension under s 48(2). He was therefore required to pursue all the relief arising from that cause of action in the same proceedings and could not split the dispute into successive litigation.

The SCA accordingly upheld the appeal and set aside the High Court's order. The review application was dismissed with costs.

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