



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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Bouwer v The South African Legal Practice Council (1050/2024) [2026] ZASCA 141

(16 October 2026)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appellant's appeal.

This matter concerned Mr Johan Nicolaas Bouwer (the appellant), an attorney who had been admitted to practice in 1985. The appeal arose from an order of the Gauteng Division of the High Court, Pretoria (the high court), which had suspended him from practising for 18 months after finding that he had misappropriated funds belonging to a deceased estate. This appeal was with the leave of the high court.

The factual background concerned the estate of the late Erica Steenberg, who died intestate on 8 June 2013. Her husband, Mr Willem Adriaan Steenberg, was appointed executor of the estate and, during 2013, instructed the appellant to assist with its administration. In 2018, the deceased's daughter, Ms Renate Louw (Ms Louw), and her brother consulted the appellant concerning the administration of the estate. The appellant informed them that an estate account had been opened and that funds had been deposited into it. Ms Louw alleged that during 2018 and 2019 she received no communication from the appellant concerning the delay in receiving her inheritance. She subsequently approached another firm of attorneys for assistance; however, this law firm's attempts to intervene failed, as they received no response from the appellant. As of 29 May 2020, the appellant had not made any payments to the heirs. Ms Louw then approached the LPC to lodge a formal complaint.

The LPC's investigation revealed serious concerns regarding the handling of the estate funds. It alleged that during 2014, the appellant opened a deceased estate account into which R809

720.14 was deposited and further that, during 2014 and 2015, almost all of these funds had been misappropriated through a series of transfers into various accounts, including the appellant's own trust account. By August 2022, the deceased trust account reflected a debit balance of R1 201.32. The LPC further alleged that the appellant had failed to account to either the LPC or the beneficiaries for the R800 000. It also alleged that, when called upon to account, the appellant refused and/or failed to do so in some instances. In others, he did not account for all payments or interest on the purported investments he had made for the benefit of the beneficiaries. These deficiencies were uncovered during an investigation conducted by the LPC's chartered accountant, who obtained the relevant bank statements directly from the bank for inspection in terms of s 37(2)(a) of the Legal Practice Act 28 of 2014 (the LPA).

On 21 November 2022, the National LPC resolved to institute legal proceedings to suspend the appellant from practising as a legal practitioner or alternatively have his name removed from the roll of attorneys. Initially, the National LPC sought urgent relief to suspend, alternatively strike the appellant off the roll of attorneys. Minnaar AJ struck the s 43 application from the roll for lack of urgency. On 28 March 2023, the LPC launched an application comprising 'Part A', pending 'Part B'. In 'Part A' of the notice of motion, the LPC sought an order suspending the appellant from practicing as an attorney pending the finalization of 'Part B'. In the latter, it sought an order for the removal of the appellant from the roll of attorneys, or, in the alternative, that he 'be finally suspended' from practising as an attorney, and certain ancillary relief.

The high court found in favour of the National LPC. It found that the appellant had been entrusted with estate funds but had moved those funds and used them for other purposes, including lending money to clients for the purchase of immovable property and the payment of clearance certificates. The high court regarded this as a classic case of misappropriation, and it concluded that the offending conduct had been established on a balance of probabilities and that the offending conduct was serious enough because it involved an element of dishonesty. The high court consequently found that he was no longer a fit and proper person to practise, although it considered that striking him from the roll was not warranted because he was then practising only as a consultant and did not handle trust funds at his current firm. It therefore suspended him for 18 months and ordered him to provide a detailed accounting of the estate funds.

On appeal before this Court, the appellant raised two principal preliminary objections. The first concerned the *locus standi* of Ms Keetse of the Gauteng Provincial Office to institute proceedings against a practitioner. The SCA rejected this argument. Citing *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others*, this Court held that the established mechanism for challenging the authority of a person acting on behalf of a litigant is Rule 7 of the Uniform Rules of Court. The appellant had never invoked Rule 7 to challenge Ms Keetse's authority before the high court. The SCA therefore held that he could not properly raise the issue at the appellate stage.

The second preliminary objection concerned the alleged premature institution of the high court proceedings. The appellant contended that the LPC ought not to have approached the high court before a disciplinary inquiry was conducted and before the disciplinary committee had recommended such an inquiry. The SCA rejected this contention. It relied, in particular, on

South African Legal Practice Council v Louw and Others, where the high court had expressly recognised that s 44(1) of the LPA preserves the high court's inherent power to discipline legal practitioners as officers of the court. The exercise of that power is not conditional upon the LPC first conducting a full disciplinary inquiry.

The SCA consequently found that the appellant's case falters on the two preliminary points discussed above and held that ordinarily this would have been the end of this appeal; however, it would be in the interest of justice for this Court to address the merits in detail. The central issue before the SCA was therefore whether the LPC has met the trite requisites for the granting of an interim interdict. The SCA emphasised the distinction between an interim suspension and final disciplinary relief. At the interim stage, the enquiry is not whether the practitioner is ultimately "fit and proper" to practise. That question arises when final relief is considered, and the three-stage enquiry is applied. An interim suspension is precautionary in nature and is intended to protect the public and safeguard trust funds pending the determination of the final proceedings. The high court had therefore misdirected itself by applying the three-stage enquiry and imposing what was effectively a punitive final suspension.

Accordingly, the SCA held that the appropriate enquiry was instead whether the LPC had established the requirements for an interim interdict. These requirements are a *prima facie* right, although open to some doubt; a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; a balance of convenience favouring the granting of the interim relief; and the absence of another satisfactory remedy.

In considering the first requirement, namely a *prima facie* right, the SCA found that the National LPC had established sufficient grounds. The appellant had failed to account to Ms Louw and the LPC concerning the alleged misappropriation of the deceased estate's funds. The SCA held that on his own version, he had not produced all the books and documents relating to the trust funds or satisfactorily accounted for the amounts he claimed to have invested on the executor's instructions. The SCA held that at this stage, the LPC is only required to show a *prima facie* right, even if open to some doubt, and found that it has done so.

The SCA further found that there was a well-grounded apprehension of irreparable harm. This Court found that the appellant did not refute the serious allegations against him. Instead, in the face of serious allegations levelled against him, all he stated was that the National LPC denied his *audi alteram partem* rights before the matter was enrolled in the high court and he refused to disclose the information necessary to explain what had happened to the estate funds. The SCA consequently found that the apprehension of irreparable harm if the interim relief is not granted is well grounded.

With regard to the balance of convenience, the SCA held that the appellant had not identified any alternative measures that would adequately protect members of the public while enabling the LPC to perform its statutory oversight functions. The balance accordingly favoured the LPC. This Court also found that no other satisfactory remedy existed. Although the appellant was no longer practising as a sole practitioner and was working as a consultant, he continued to provide legal advice. This meant that members of the public remained potentially vulnerable

to the conduct under investigation, including the alleged mismanagement of deceased estates and trust money.

The SCA accordingly concluded that the LPC had satisfied all the requirements for an interim suspension order and this should have been done in the high court. Consequently, all that remains is for the National LPC to initiate Part 'B'. The appeal was therefore upheld, and the high court's order was set aside. In its place, the SCA ordered that the appellant be suspended from practising as an attorney pending the hearing of Part 'B', which was required to take place within six months from the date of the order of the SCA. The appellant was further directed to surrender his certificate of enrolment and was prohibited from operating or handling his trust account, subject to the appointment of a *curator bonis*. He was also required to deliver his accounting records, files and other relevant documents. Pending the finalisation of Part B, he was prohibited from acting as an executor, curator or guardian of a minor, trustee of an insolvent estate, liquidator, trustee of a trust or liquidator of a close corporation.

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