



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

LAW SOCIETY OF THE NORTHERN PROVINCES v SIPHIWE DUBE

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Law Society of the Northern Provinces (the Law society) against an order of the North Gauteng High Court, Pretoria suspending Mr Siphiwe Freeman Dube from practice for one year. However, the SCA held that the high court had erred in not ordering Mr Dube to pay the costs of the Law society on a punitive scale. It accordingly substituted the order of the high court with an order directing Mr Dube to pay the costs of the application on an attorney and client scale. Notwithstanding the dismissal of the appeal on the merits, the SCA ordered Mr Dube to pay the Law society's costs of the appeal.

Mr Dube, who was admitted as an attorney in 2007, was appointed as a professional assistant by Maluleke Msimang & Associates, a firm of attorneys in Pretoria (the firm) in February 2008. He registered his own practice with the law society whilst still employed by the firm and without its consent. He commenced practising for his own account in

November 2008. The firm later discovered that Mr Dube had stolen its clients' files and that he had created a conflict of interest by acting, through his own practice, for a claimant in a third party claim whilst simultaneously acting for the Road Accident Fund (RAF) on the instructions of the firm in the same matter. The firm launched an application which was subsequently settled on the basis that he would return the files and pay R80 000 to the firm, being the fees due to it upon receipt of the proceeds of a third party claim from the RAF. Mr Dube returned the files but failed to honour his undertaking to pay the R80 000. The firm then lodged a complaint of unprofessional conduct against him with the law society.

The Law society conducted its own investigations and discovered further transgressions by Mr Dube. First he had failed to submit auditor's reports for his practice on time, thereby contravening rule 70 of its rules. Second, he had contravened rule 68.8 in that he had delayed to account to his client when the matter was settled or had misappropriated the funds. Third, he had submitted a bill of costs that included false items to the RAF.

The Law society launched an application in the high court for an order striking Mr Dube's name off the roll of attorneys. An interim order, suspending him from practice, was issued. When the striking off application came before the high court, it held that the order sought was a severe sanction. It instead made an order suspending Mr Dube from practice for one year and imposed certain restrictions regarding his employment after the expiry of the suspension period. It further ordered him to pay the Law society's costs on a party and party scale. The Law society then appealed to the SCA against these orders.

Regarding the appeal against the order of suspension, the SCA held that the orders issued by the high court revealed that it had fairly weighed all the relevant factors, including its duty to protect the public and the attorneys' profession. This court concluded that the high court had exercised its discretion properly and that there was no basis to interfere. On the issue of costs, the SCA held that the Law society had not acted on a frolic of its own and that there was no reason for the high court to depart from the general rule that a respondent has to pay costs of the Law society on an attorney and client costs. It accordingly made the orders referred to above.