



## 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  
**DATE** 28 March 2013  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

#### ***THE LAW SOCIETY OF THE CAPE OF GOOD HOPE v MW RANDELL (341/2012) [2013] ZASCA 36 (28 MARCH 2013)***

Today the Supreme Court of Appeal (SCA) upheld an appeal by the Law Society of the Cape of Good Hope, against a judgment and order of Smith J in the Eastern Cape High Court, Grahamstown, in which he granted an order staying the application to strike off Mr Michael Wharton Randell. Mr Randell is facing charges of fraud and theft arising out of his alleged misconduct as one of the trustees of the Greenwood Property Trust.

The Greenwood Primary School was the sole beneficiary of the Trust.

It is alleged that Mr Randell and his co-trustees collaborated to add themselves as beneficiaries and later appropriated R2.4 million from the trust.

When the Law Society applied to have Mr Randell's name removed from the roll of attorneys, he successfully applied to have the striking off proceedings

stayed pending the finalisation of the criminal proceedings against him. He argued that he would be prejudiced in his defence in that he would be obliged to show his hand and his right to remain silent would be violated. He had already, denied the allegations against him in a related civil matter.

The Eastern Cape high court agreed with him but the SCA disagreed, holding that that Mr Randell was not entitled to a stay of the civil proceedings, where there was no compulsion on him to enable a sworn statement in his defence in apposition to the striking off application. The SCA held that when he had a choice, either to respond or not, the court 'could not intervene'. The court also pointed out that Mr Randell had failed to show that he would suffer prejudice if he made a statement because he had in any event denied that he had been guilty of any wrongdoing.

Accordingly the appeal by the Law Society was upheld by the SCA and the order of the Eastern Cape high court was altered to one dismissing Mr Randell's application for a stay with an order, and further dismissed his application for a stay of the striking off proceeding with costs on an attorney and client scale.