



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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STATUS Immediate

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 Le Roux (185/2015) [2015] ZASCA 168 (26 November 2015)

The Supreme Court of Appeal (SCA) today handed down judgment in a matter relating to the lawful requirements of the Law Society of the Northern Provinces for the submission of an unqualified audit certificate for the issue of fidelity fund certificates to a practitioner, and whether the secretary of the Law Society could be compelled to grant a fidelity fund certificate where the practitioner had a qualified audit certificate.

The appeal to the SCA by the Law Society of the Northern Provinces (the Law Society) was against the judgment of the Gauteng Division of the High Court, Pretoria that held that the secretary of the Law Society was required to issue fidelity fund certificates to the first and second respondents.

Proceedings began in the Gauteng Division of the High Court, Pretoria when the first and second respondents, two practising attorneys practising as such in the third respondent, an incorporated firm launched an urgent application seeking an order compelling the secretary of the Law Society (the secretary) to issue fidelity fund certificates after they unsuccessfully applied to the secretary for the renewal of their fidelity fund certificate. The secretary had refused to issue the fidelity fund certificates because the respondents did not comply with a requirement of the Law Society in that they lodged a qualified audit certificate with their applications to renew their fidelity fund certificates. The Law Society had issued a resolution on 30 September 2013 amending the lawful requirements for the issue of a fidelity fund certificate in terms of s 42(3)(a) of the Attorneys Act 53 of 1979 (the Act) to provide that an application for a fidelity fund certificate must be accompanied by an acceptable, unqualified audit certificate of the practitioner. The respondents' audit certificate was heavily qualified because one of the associates who worked with them had misappropriated a large sum of money from the third respondent's trust account. The court a quo held that the requirement by the Law Society for an unqualified audit report before it could issue a fidelity fund certificate was unlawful because it required practitioners 'to do things that they are objectively not capable of doing in situations where they are not blameworthy and where the risk to the law society and to the fund is as small as it is in this case'.

The SCA held that the resolution by the Law Society constituted administrative action within the meaning of s1(a) and 1(b) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in that it was a decision of an administrative nature made by an organ of state or a juristic person exercising a public power and performing a public function under an empowering statutory provision, which has direct external legal effect on practitioners and adversely affects their rights. The SCA reiterated that an-invalid administrative action may continue to have legal consequences until set aside on judicial review and that the resolution was binding on the secretary and the respondents until set aside only by judicial review.

The SCA also found that the provisions of s 42(3)(a) of the Act circumscribed the role of the secretary to merely satisfying herself that the application by the practitioner complies with the lawful requirements, and that she did not have the discretion to grant the application where a practitioner did not meet the lawful requirements.

The SCA also held that the court committed an irregularity when it found that the resolution was unlawful in that it required practitioners 'to do things that they were not objectively capable of doing in situations where they were not blameworthy'. The correct position is that the requirement must be capable of objective fulfilment, and not that the secretary was obliged to issue a fidelity fund certificate to an insolvent practitioner with a trust deficit.

The SCA accordingly upheld the appeal with costs and the judgment of the Gauteng Division of the High Court, Pretoria was set aside and replaced with an order dismissing the application with costs on the scale as between attorney and client.

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