The Republic of South Africa

THE SUPREME COURT OF APPEAL

reportable

Case no: 120/99

In the matter between

JOAQUIM AUGUSTO DE FREITAS	**First Applicant**
INDEPENDENT ASSOCIATION OF ADVOCATES OF SOUTH AFRICA	**Second Applicant**
and	
SOCIETY OF ADVOCATES OF NATAL	**First Respondent**
NATAL LAW SOCIETY	**Second Respondent**

Coram: **HEFER ACJ, SMALBERGER ADCJ, NIENABER, CAMERON, MPATI JJA**

Date of Hearing: **15 February 2001**

Date Delivered: **9 March 2001**

Advocate - unprofessional conduct - accepting instructions without intervention of attorney - whether the Bar is a referral profession and, if so, whether change is required.

JUDGMENT

HEFER ACJ:

[1] Legal practitioners in South Africa are either advocates or attorneys. As Corbe CJ observed in *In re Rome* 1991(3) SA 291 (A) at 305I - 306A,

> "[h]ere we have what has been described as 'the divided Bar' (see Joubert (ed) *Law of South Africa* vol 14 para 246). It is a legacy from Holland, and also from England. Legal practitioners thus fall into one or other of the two groups, the advocates and the attorneys."

[2] Mr De Freitas, the first applicant in this application for leave to appeal, is a advocate. He practises in KwaZulu-Natal as a member of the second applicant, th Independent Association of Advocates of South Africa ("IAASA"). IAASA function side by side and, in a sense, in competition with the constituent Bars of the Gener Council of the Bar of South Africa ("the GCB"). The constituent Bars have been i existence for the last century or more at the seats of the various Divisions of the Hig Court. Each of them has its own rules regulating the professional conduct of it members. One rule that they all have in common is that, with minor exception members do not accept instructions from clients without the intervention of attorney IAASA was founded during 1994 by a group of advocates who were and are avers to this and certain other rules. Its constitution permits its members to acce instructions directly from the public.

[3] Mr De Freitas has accepted instructions in this manner. He has also performe

Society of Advocates of Natal ("the Society of Advocates") to have his name struc
from the roll. IAASA and the Natal Law Society ("the Law Society") intervened in th
proceedings and eventually, in a judgment reported as *Society of Advocates of Nata
v De Freitas and Another (Natal Law Society Intervening)* 1997(4) SA 1134 (N), th
Full Court of the Natal Provincial Division of the High Court

> (a) found Mr De Freitas guilty of unprofessional conduct and suspended him from practice for a period of six months, and
>
> (b) dismissed a counter-application by IAASA for an order declaring that any advocate has, alternatively, advocates who are members of IAASA have, the right to accept instructions from any person with or without the intervention of an attorney, to perform any of the functions of an advocate.

[4] After unsuccessfully seeking the leave of the Court *a quo* the applicants hav
now applied to the Chief Justice for leave to appeal. Their application has been referre
to the Court for argument. It is opposed by the Society of Advocates and the Law
Society on the ground that there are no reasonable prospects of a successful appeal

[5] At the outset it is necessary to remind oneself of the role of the courts in matter
of this kind. Since Mr De Freitas is not a member of the Society of Advocates he i
neither bound by the latter's rules nor subject to its internal disciplinary jurisdiction

NO 1921 AD 425 at 435; *Society of Advocates of Natal and Another v Knox an*

Others 1954(2) SA 246 (N) at 247G *ad fin*). In *De Villiers* at 456 Innes CJ said :

> "The interference of the Court is clearly justified where there has been gross non-discharge or mis-discharge of professional duty. So also where the conduct proved, whether criminal or not, is so morally reprehensible that the person guilty of it is clearly unfit to become or remain a member of the profession. But when we leave the area of criminality, immorality or actual misconduct, the enquiry becomes more complicated ..."

In the latter type of case interference by the court is ultimately a matter of judicia

discretion (*De Villiers* at 432; *Beyers v Pretoria Balieraad* 1966(2) SA 593 (A) a

605D-E). In other words, it is for the court to consider the propriety of the conduc

proved and, if it is found to be unprofessional, what the penalty should be. In doin

so it must take account of all the circumstances of the case with due regard to th

demands of the proper administration of justice, and the interests of the profession an

the public.

[6] In the present case the main charge against Mr De Freitas is that he has accepte

instructions from clients without the intervention of attorneys. That he has done so o

several occasions is not disputed. In their written heads of argument the applicant

sought to counter the Society of Advocates' case by denying that the Bar in ou

country is a referral profession which does not generally permit advocates to accep

instructions directly from clients. This was in line with their stance in the Court *a quo*

However, in his oral argument in this Court Mr Van der Spuy, senior counsel for th

sought to meet the case against Mr De Freitas with an argument that a referral practic is no longer suitable in view of events during 1994 and thereafter.

[7] Let me say before I deal with this argument that I have no doubt that th concession was correctly made. Admittedly, the Court *a quo* could find no clea indication in the old authorities that advocates practising in Holland before th reception of Roman-Dutch law in South Africa only acted on instructions fro attorneys. But, after examining subsequent developments in South Africa and th influence of the English practice, the Court concluded that the Bar in this country is referral profession. This, to my mind, is plainly correct in view particularly of th remarks in *Rome*'s case which will be quoted later, and the judgment in *Beyers Pretoria Balieraad supra* in which this Court found an advocate guilty o unprofessional conduct *inter alia* for having accepted instructions without th intervention of an attorney.

[8] The referral practice that we know in this country is not that advocates may n under any circumstances accept instructions directly from clients. Various exception are allowed, one of which is that counsel may be instructed directly by the Legal Ai Board. In other matters the rules of the various Bars do not correspond in all respects Advocates in the Western Cape may, for example, take direct instructions for opinions from a restricted list of clients, which members of other Bars may not do.

[9] The practice clearly serves the best interests of the professions and the publi

306B-D,

> "[t]he advocate is, broadly speaking, the specialist in forensic skills and in giving expert advice on legal matters, whereas the attorney has more general skills and is often, in addition, qualified in conveyancing and notarial practice. The attorney has direct links (often of a permanent or long-standing nature) with the lay client seeking legal assistance or advice and, where necessary or expedient, the attorney briefs an advocate on behalf of his client. The advocate has no direct links or long-standing relationship with the lay client: he only acts for the client on brief in a particular matter ... "

In litigious matters the benefits to the client arising from this relationship are manifes Although some attorneys have precisely the same academic qualifications a advocates their practical schooling is markedly different since it is aimed at th acquisition of special skills to do different types of work. This in turn is so becaus advocates and attorneys occupy themselves with different kinds of litigious work. is the advocate who generally prepares pleadings and presents clients' cases to th courts, whereas it is the attorney who takes care of matters such as the investigatio of the facts, the issuing and service of process, the discovery and inspection o documents, the procuring of evidence and the attendance of witnesses, the executio of judgments, and the like. In this way each of them applies his own skills for th benefit of the client. It is quite clear that, where an advocate is not briefed by a attorney, he will of necessity have to do some of the work which his attorney woul otherwise have done. That part of the work cannot, as Mr Van der Spuy suggested simply be left to the client. After all what does a lay client know about these matters

to do the work himself or the client, at the very least, will require counsel's guidanc in matters of which the latter himself usually knows very little.

[10] It is not without reason that Corbett CJ mentioned the absence of direct an possibly long-standing links between an advocate and his client. It is of the utmo importance that there should be some distance between them in order to ensure an preserve the advocate's independence. In this regard (and also to emphasize what have already said) I can do no better than to quote from a speech by Lord Benso who chaired the Royal Commission on Legal Services in the United Kingdom betwee 1976 and 1979. (The speech was delivered in Cape Town during 1988 and has bee reported in 1988 (105) SALJ 421-433.) Speaking on the subject of the possible fusio of the professions of advocates and attorneys he said at 422-429:

> "We [the Commission] based our conclusion [that there should not be a fusion] on three separate principles. First, any rule made by or privilege granted to a profession must be designed not for the private benefit of the members of the profession but to protect the interest of, or to enhance the level of service to, the public. Second, in every walk of life, particularly in the professions, there is a growing need to specialize in each of the many different types of work and activity. This is a duty which every profession owes to the public it serves. Third, one of the privileges and duties conferred upon a professional man is the ability to express an independent and impartial opinion in respect of his client's affairs .... The evidence put before us was overwhelmingly opposed to fusion. The Bar and the majority of the solicitors opposed it. Nearly all the witnesses, including the judges, said that it would diminish the specialist services provided by the bar. In particular it would lead to a serious fall in the quality of advocacy and, because of the nature of court proceedings, in the quality of judicial decisions. This would damage not only the interests of litigants but the administration of justice itself ...
>
> Let us look at the practical issues. A mass of work is brought into solicitors' offices by

> before him. For example, large sums of money and property may be involved which require the advice of specialists in property and in taxation. Complex legal issues emerge which demand experience in the particular branch of the law. Advocacy of a high order may be needed to avoid a custodial sentence which imperils a client's freedom. The solicitor may be too close as a friend or advisor of long standing or be so involved with the detail as to prevent him from taking a detached view. In these many situations the solicitor and the client are not content unless they can obtain the independent services of a specialist with the necessary skills at his command. It would be foolish, if not negligent, to do otherwise ... The Commission was satisfied that the independent view which is brought to bear by counsel often has the effect of defining and limiting the issues or bringing about a settlement, which represents important savings in time and cost. "

These remarks reveal the symbiotic relationship between the two professions an highlight the inherent dangers of an attorney acting without an advocate in deservin cases or of an advocate acting without an attorney and trying to do the latter's work

[11] There is, moreover, a more obvious reason why an advocate should not perform the functions of an attorney. It is that, unlike attorneys, advocates are not required t keep trust accounts. In terms of the Attorneys Act 53 of 1979 every attorney sha open and keep a separate trust banking account and deposit therein money held o received by him on account of any person. No amount standing to the credit of suc an account shall be regarded as forming part of the assets of the practitioner or ma be attached on behalf of any or his creditors; and, equally importantly, any shortfall i the account may, in proper circumstances, be recovered from the Fidelity Fund. A client who does not employ an attorney and instructs an advocate directly does no have the same protection or any protection at all. In the present case, for example, M

the process of a divorce. The parties were married in community of property and th assets had to be divided. With this in mind Mr De Freitas wrote to his client' employer requesting it to pay half of a pension payable to the client into his (D Freitas's) "business account". Had the money been paid the client would have had n protection whatsoever in the event of his advocate's insolvency or against th attachment of the money in the account by the latter's creditors. Such a state of affair is plainly not in the public interest.

[12] Bearing all this in mind I turn now to consider the argument that events that hav occurred since 1994 call for a change. Under this rubric Mr Van der Spuy listed (1) th coming into effect of the Interim Constitution (Act 200 of 1993); (2) the formation o IAASA; and (3) the grant to attorneys of the right to appear in superior courts by th Right of Appearance in Courts Act 62 of 1995. I will deal with each of these in turn

[13] The Interim Constitution.

(a) The Interim Constitution which took effect on 27 April 1994 is applicabl because the conduct proved occurred during 1996 before the curren Constitution came into operation.

(b) The right of every detained person to consult with, and the right of ever accused person to be represented by a legal practitioner of his or her choice ar entrenched by ss 25(1)(c) and 25(3)(e) respectively.

(c) I am unable to accept Mr Van der Spuy's submission that these provisions ne

se afford a detained person and an accused in a criminal case the right to engag an advocate of his or her choice *without the intervention of an attorney*. Thi is not what the sub-sections say; nor is there any indication of an intention to d away with a firmly established and well-known practice.

(d) Nor do I regard the existence of these provisions sufficiently cogent to persuad me that a change is called for. Detainees and accused persons are not (by th operation of the referral practice) precluded from access to counsel of thei choice. All that is required is that they go through the right channels. If they d not have the financial means to engage counsel there are many competen attorneys who would represent them. They would therefore not be denied lega representation.

(e) Sec 26(1) which has also been called in aid entrenches the right freely to engag in economic activity and to pursue a livelihood anywhere in the national territory But this does not entail that a trade, industry or profession cannot be regulate in a manner which does not in effect deny the right. The continuation of th referral practice would not have this effect.

(f) Mr Klein, junior counsel for the applicants who presented part of the argumen on their behalf, stressed the fact that the Interim Constitution introduced a new social order in which, he submitted, there should be greater access to the ma in the street to a lawyer of his choice. Whilst I support the underlyin

philosophy of the submission I cannot agree that a practice which has hithert been regarded as in the public interest should be forthwith abandoned.

[14] The formation of IAASA.

Mr Van der Spuy did not reveal to us the relevance of the formation of a association which does not support the referral practice. All that it tells us is that th practice is not favoured by every admitted advocate in the country.

[15] The attorneys' right of appearance in the High Court, this Court and th Constitutional Court.

Until the passing of Act 62 of 1995 attorneys did not generally have the right t appear in these courts; but those who have certain prescribed academic and practica qualifications may now be admitted to do so in terms of s 3 read with s 4 of the Ac Mr Van der Spuy pointed out that attorneys who have been so admitted now practis in direct competition with advocates and submitted (1) that counsel's right to accep instructions directly from members of the public is the necessary corollary of th attorneys' right to appear in the courts which used to be the exclusive domain o advocates and (2) that a situation where members of the Bar are dependent on thei competitors for their livelihood cannot be tolerated. That some attorneys now practis in competition with advocates is correct but the first submission is plainly untenable I say no more. As for the second submission I agree that the situation is undesirabl

so. Weighed as a matter of public interest against the benefits of the referral practice it seems to me that the new right of appearance does not afford sufficient reason to d away with the established practice or to change it.

[**16**] In any event I want to say this about change. The referral practice was no conceived by the legislature or devised by the courts. It came to us through centurie of experience and development first in the United Kingdom and later in our ow country. It exists in one form or the other in several other Commonwealth countrie where there are divided Bars. One's general impression of the position in countrie such as England, Wales, Ireland, Scotland, New Zealand and various Australian state is that direct access by lay clients to advocates is strictly regulated. One cannot, a IAASA requests us to do in its counter-application, simply put a pen through the Bars referral rules even though one may feel that changes in certain areas may be justifie It is not for us to take such a bold step. Nor, I venture to suggest would it b appropriate for the legislature to do so. The rules have been designed by the Bars fo practice in a divided profession in what is plainly the public interest. Experience members of the Bars are much more aware than we are of the problems in, and th needs of, the profession and of the available facilities to overcome them. It should b left to them to consider in what respects and to what extent change is required. I sa this despite the fact that the courts will be the final arbiters of the validity of an

changes that may be effected in so far as they may reflect on the propriety o advocates' conduct. It would be foolish for us to interfere in the way in which IAAS asks us to do knowing full well that, by doing so, we will force South Africa out o step with comparable Commonwealth countries and bring an end to a practice whic clearly serves the interests of the public.

[17] From this it follows that the refusal of the declaratory order sought by IAAS cannot be disturbed.

[18] It also follows that the Court *a quo*'s finding that Mr De Freitas is guilty o unprofessional conduct for having accepted instructions without the intervention o attorneys cannot be disturbed either.

[19] I do not intend to deal with the finding that he had performed the functions o an attorney. Despite a half-hearted attempt by Mr Van der Spuy to persuade us to th contrary it is quite clear that the finding is well founded.

[20] Mr Van der Spuy argued in conclusion that the suspension for six months an the order of costs granted against the applicants by the Court *a quo* are unreasonable Whilst I have some sympathy with Mr De Freitas because he has been suspended fo having acted in accordance with IAASA's constitution whereas his colleagues have no been penalized, there is no reason why we should interfere with the way in which th Court *a quo* exercised its discretion both in regard to the penalty and in regard to th

Failing reasonable prospects of a successful appeal the application is dismissed with costs including, in the case of the first respondent, the costs of two counsel.

JJF HEFE
Acting Chief Justice

Concur:
Smalberger ADCJ
Nienaber JA
Mpati JA

CAMERON JA:

(g) I have had the benefit of reading the judgment of Hefer ACJ. I agree that th application for leave to appeal lacks merit and must be dismissed. However, th reasons that compel me to this conclusion are considerably narrower than those Hefer ACJ, and I therefore propose to set them out briefly.

(h) The question that the application to strike off the first applicant and the counte application of the second applicant, IAASA, both raise is whether this Court shoul invoke its supervisory jurisdiction over legal practitioners to enforce against a advocates practising as such a rule that they may not act for a party without th intermediation of an attorney. That the Court has a jurisdiction to supervise how leg practitioners conduct their practice, and that it is to be exercised in the public interes I take as self-evident. More difficult, in my opinion, is whether it should be engaged

to uphold, and IAASA, the "rebel Bar", seeks to challenge.

(i) That the rule is not of unquestioned antiquity, nor of uncontested ambit, appears fro
Attorney-General v Tatham 1916 TPD 160 at 168 - 9, where the Full Bench of th
Transvaal Provincial Division refused to regard as unprofessional the conduct of a
advocate in advising a client without the intervention of an attorney and charging a fe
for this service. Indeed, the traditional Bar (to which I shall refer as "the Bar") has itse
been reconsidering aspects of the referral rule since 1995, when the Right
Appearance in Courts Act 62 of 1995 extended to attorneys the right to appear in th
superior courts. This appears from the papers and was confirmed to us durin
argument by counsel for the Bar.

(j) That history and tradition, by themselves, cannot suffice to justify the invocation of th
Court's power over legal practitioners I also take to be self-evident. Nor, of course, ca
the mere fact that the established legal profession applies such a rule.

(k) The crisis in legal services in this country is too acute, and the threat this represent
to the administration of justice too grave, for the courts to enforce tradition without ther
being compelling reason in the public interest to do so. Too many of the rules for whic
the Bar once fought have been abandoned in the course of time for us to accept withou
further ado that any rule it now seeks to uphold must routinely receive the *imprimatu*
of judicial enforcement. One has but to think of the two-counsel rule (in terms of whic
senior counsel were formerly required to appear only when briefed with a junior) an
the rule that, until all too recently, excluded academics not in full-time practice fro
membership of the Bar, to realise that features of practice defended today as intrinsi
to the proper constitution of the profession and to the adequate rendition of service

moving profession.

(l) To my mind, the referral rule is too uncomfortably reminiscent of some of these rule to conclude in broad terms that it is necessary to uphold it in the public interest withou precise and narrow scrutiny of the basis for that claim. Indeed, the application to strik off the first applicant was brought on the premise that it is "a fundamental principle o the advocates' profession as practised in SA (and in all Commonwealth jurisdiction where the division of the legal profession into Advocates and Attorneys has bee maintained) that the Advocates' profession is a referral profession and that Advocate do not accept briefs directly from members of the public". Shortly before argument, thi Court requested detailed information from the parties as to the position in comparabl jurisdictions. That information showed that the averment in question was stated to broadly, and Mr Wallis, who appeared for the Bar, disavowed reliance upon it.

(m) The information supplied to us from the United Kingdom and Australasia indicates tha in most areas where the division within the legal profession is maintained, the referr rule has been substantially adapted, so that, subject to strict safeguards, specialis litigation-practitioners are indeed now entitled to take work directly from the public o sections of it. In this the Bar in our country appears to be behind its peers even in th United Kingdom where, at the English Bar, detailed rules providing for direct acces in strictly circumscribed cases now exist. That those jurisdictions have so adjusted th rule in the interest of both the public and the profession that serves it seems to me t be beyond question; and it is for these reasons that I conclude that a claim by a branc of the legal profession that a professional rule or practice exists in the public interes and should for that reason be enforced by the courts must be scrutinized to ensure tha

(n) Where a rule of professional practice is sourced in statute, any limitation of rights tha statute contains will of course have to pass muster under the Constitution. Regulatio of professional practice will certainly have to be rational and non-arbitrary to pas constitutional scrutiny (*S v Lawrence* 1997 (4) SA 1176 (CC), at paras 34 - 35, pe Chaskalson P). Where a rule of professional practice is not sourced in statute it mus for the reasons I have given, be subjected if anything to even more exacting scrutiny As is indicated in the judgment of Hefer ACJ, the basis of the courts' power to enforc professional rules is not a novel question in this Court. In the Transvaal High Cour Innes JP formulated a test that in my view still forms a sound basis for distinguishin between conduct by a practitioner that is intrinsically and necessarily unprofessiona and conduct that may be unprofessional and undesirable only because of th contingent conditions of legal practice within which it occurs. In *Pienaar and Versfel v Incorporated Law Society* 1902 TS 11 at 16, Innes JP asked:

> "Has [the Court] the power to prohibit conduct on the part of practitioners, which, though not in itse immoral or fraudulent, may yet in the opinion of the Court be inconsistent with the proper position its practitioners and calculated, if generally allowed, to lead to abuses in the future?"

His answer was that the Court does possess that power. As Innes JP indicated, if the conduc impugned is not "in itself immoral or fraudulent" it must pass a two-fold test for judici proscription as unprofessional: it must be (a) inconsistent with the proper position of a lega practitioner; and (b) calculated, if generally allowed, to lead to abuses in the future.

(o) In my view, the mere fact that the profession is divided into two in our country does no logically or necessarily entail the referral rule. Experience in those jurisdictions wher

Bars without enforcing the referral rule against all other litigation-specialists shows a much.

(p) I agree with Hefer ACJ that it is in the public interest that there should be a vigorou and independent Bar serving the public, which, subject to judicial supervision is sel regulated, whose members are in principle available to all, and who in general do n perform administrative and preparatory work in litigation but concentrate their skills o the craft of forensic practice. It is not, however, clear to me that this *desideratum* i incompatible with some relaxation of the referral rule and I do not understand th judgment of Hefer ACJ to suggest that it is. I do, however, consider that the Bar shoul be encouraged to investigate with urgent speed whether accommodations of th referral rule along the lines already practised in comparable jurisdictions should not b introduced here as a means of possibly enhancing public access to legal services an reducing the cost of at least some of those services.

(q) There is, in short, in my view nothing intrinsically improper in a specialist corps litigation-practitioners operating without the referral rule in its widest sense; nor, a experience in comparable jurisdictions amply shows, would sensible adjustments t the rule be inimical to the continued flourishing of such a corps. From a public polic point of view, the enactment of the 1995 statute indeed shows that the Legislatur considered that at least one branch of the profession — attorneys — should b permitted to offer all litigation services without the necessity for being briefed b another practitioner. That does not show, as IAASA insupportably contended, tha advocates should by reciprocal relaxation be permitted to engage in all forms attorneys' work. But it does show that the courts — before whom litigation-specialist

— should be meticulous in their scrutiny of the same rule when its enforcement i
sought against all advocates.

(r) However, as is explained in the judgment of Hefer ACJ, there is a very particular, an
contingent, reason for concluding that the "proper position" of advocates in this country
at least for the present, entails the enforcement of the referral rule since its disregard
if generally allowed, would "lead to abuses in the future". That is the position with regar
to trust accounts. Because the statutes regulating the two branches of the professio
are, by and large, premised on their division into two branches, advocates are no
required or permitted to keep trust banking accounts for the receipt and retention o
client's money. If they purport to do so, a peculiarity of our law of trusts precludes th
arrangement from being effective to protect the public against appropriation and loss
This is because in our law (unlike most other countries where the trust institution ha
developed) a living person cannot by unilateral act sequester a portion of assets an
call them a "trust" so as to create the founder a trustee and render the assets immun
from creditors (*Ex parte Estate Kelly* 1942 OPD 265, 272; *Crookes N O v Watso*
1956 1 SA 277 (A) 298, per van den Heever JA). An advocate of necessity operate
outside the statutory apparatus of s 79 of the Attorneys Act 53 of 1979 and cannot b
unilateral declaration create a trust. Indeed, for all trusts except oral trusts, the Trus
Property Control Act 57 of 1988 has further complicated the position by requiring th
official sanction of the Master before even a properly created and appointed truste
can operate as such (*Simplex (Pty) Ltd v van der Merwe and others NO* 1996 (1) S
111 (W)).

(s) The facts of the present matter illustrate the real and substantial danger to the publ

dealing with their clients' money or even by taking deposits on fees in advance. A shown in the judgment of Hefer ACJ, the first applicant invited the payment into wha he called his "business account" of what may have been a very substantial portion o the accumulated assets of a married couple one of whom he was representing. Ha the invitation been accepted, not only would there have been no protection against hi creditors in the event that he was sequestrated, but there would have been n protection against his disposal of that money, as its owner, since in law when it wa paid into his account it became his.

(t) Such a situation the courts cannot countenance. For so long as the statutory absenc of trust fund protection continues, it provides in my view a compelling reason in th public interest for the courts to enforce the referral rule. It follows at the very least tha the first applicant in soliciting the payment in question acted unprofessionally an improperly and rendered himself subject to appropriate sanction by the court.

(u) It is true that a small number of advocates may disavow the intention ever to deal wit the public's money or even to take any fees in advance. Cases of this sort can b envisaged, and some advocates who have committed themselves exclusively to pr bono work no doubt practise on this basis. But they constitute a tiny minority of the tot in the profession; and the rules enforced by this Court must take practical account o what practices, if generally allowed will (again in the words of Innes JP in the *Pienaa and Versfeld* case (at 18)) be "obviously likely to lead to abuse".

(v) I therefore agree with the observation of Thirion J in the Court below, in adjudicatin on the applicants' application for a certificate in terms of rule 18 of the Constitutiona Court rules, that "what the [applicants] are seeking to achieve is a situation where th

subject to the restrictions imposed on an attorney". In this, IAASA asks this Court t accord its members a breadth of unregulated practice which goes beyond anythin known to any of the jurisdictions comparable to ours.

E CAMERO
JUDGE OF APPEA

Concur:

Smalberger ADCJ
Nienaber JA
Mpati JA