



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 10991/2021

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
<u>13 October 2023</u>	_____
DATE	SIGNATURE

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

MALESELA DANIEL TEFFO

Respondent

NEUKIRCHER J:

1] *“The word of an advocate is his bond to his client, the court and justice itself. In our system of practice the courts both high and low, depend on the ipse dixit of counsel at every turn.”¹*

¹ Kekana v Society of Advocates 1998 (4) SA 649 (SCA) at 656G-H

2] The personal qualities of an advocate, and indeed any legal practitioner, as an officer of the court must include those of diligence, honesty and integrity.² It is those qualities one looks to when giving thought to the phrase a “fit and proper person” which is at the fore-front of all admission applications, and it is uppermost on a court’s mind when taking the decision to strike a practitioner from the roll.

3] It is the lack of these qualities that led the respondent (Mr Teffo) to being struck from the roll of advocates by the Full Court³ on 16 September 2022 (the Strike Off order) and to his present predicament where he faces the possibility of being held to be in contempt of the Strike Off order. If he is found to be in contempt, the applicant (the LPC) asks for an order that he be sentenced to a suspended sentence of 12 months’ imprisonment.

THE HISTORY

4] On 2 March 2021 the LPC launched an urgent application to strike/suspend Mr Teffo from the roll of advocates. They did this in an application filed under case number 10991/21. That application was authorised by a resolution of the Gauteng Provincial Office of the LPC dated 30 November 2020 where it was resolved that:

“1. The attorneys of the Gauteng Provincial Office of the Legal Practice Council, be instructed to apply to Court for the urgent suspension of Advocate Malesele Daniel Teffo⁴ in his practise as a legal practitioner

AND THAT:

2. the Chairperson and/or any other member of the Executive Committee be and

² In re Chikweche 1995 (4) SA 284 (ZA) at 291H where the court found that the words “a fit and proper person” included the personal qualities of honesty and reliability

³ The Honourable Mr Justice Nyathi and Madam Acting Justice Bokako

⁴ Emphasis provided

they are hereby authorised to sign all documents necessary to give effect to this resolution on behalf of the Council.”

5] Ms Dlepu deposed to the founding affidavit. She states that she is the Chairperson of the LPC, elected in terms of s 9 of the Legal Practice Act 28 of 2014 (the LPA) and is authorised to depose to the affidavit by virtue of the above-stated resolution. She also deposed to the replying affidavit on 19 August 2021, the supplementary founding affidavit on 11 July 2022 and the further supplementary affidavit on 29 July 2022. In these latter affidavits she states that she is the “*former chairperson*” and “*currently a member of the Applicant’s Executive Committee*”. This being so, she still has the ability to depose to affidavits given the terms of the aforementioned resolution.

6] The matter was removed from the urgent court roll and then set down in the ordinary motion court. For some reason, in that process it was allocated another case number, being 24311/21. According to Mr Teffo, the application which was served on him and to which he responded by filing an answering affidavit, was 24311/21. However, the application that was set down, heard and judgment delivered striking him off the roll of advocates, was case number 10991/21. The LPC specifically states that there is no difference between the two matters – the only difference is that in that case number 10991/21 the notice of motion contains a prayer for urgency whereas in the notice of motion under case number 23411/21 that is absent.

7] The allegations made against Mr Teffo in the Striking Off application are extremely serious. They range from an assault on a member of the South African Police Service, to being investigated for corrupt activities in terms of the Prevention and Combating of Corrupt Activity Act no 12 of 2004, securing a default judgment despite knowing that the matter had been removed from the roll as it had become opposed, breaching a court order handed down by Fischer J on 4 October 2019, accepting instructions directly from clients, accepting payment directly from clients without being a trust account advocate and acting without a brief from an attorney.

8] Mr Teffo appeared before the Full Court to argue the Striking Off application, but refused to appear to note the judgment which was then handed down in his absence. In his appearance to argue the application, he advanced many arguments, including those he presently chooses to raise *inter alia* as regards the confusing case numbers and the authority of the deponents and the LPC's attorneys of record (MJS). The Full Court roundly rejected those arguments. According to the judgment handed down, Mr Teffo's conduct was so egregious that "*it no longer meets the requisite thresh[h]old of a fit and proper person*"⁵ and that "*the Respondent lacks the sense of responsibility, honesty and integrity and such attributes are characteristics of an Advocate. It is clear that the Respondent does not possess any of the above.*"⁶

9] Although the Striking Off application was framed in the alternative – ie strike off alternatively suspend – the court exercised its discretion and struck Mr Teffo from the roll. Included in the provisions of the order are *inter alia* the following terms: that Mr Teffo

⁵ Judgment at para [143]

⁶ Judgment at para [151]

- (a) be removed (ie struck) from the roll of legal practitioners;
- (b) surrender and deliver his certificate of enrolment as a legal practitioner to the Registrar of this Court;
- (c) was prohibited from handling or operating his bank account used in receiving money from his clients;
- (d) immediately deliver his accounting records, bank account fee books, records, files and documents to the *curator* appointed to wind up his practice;
- (e) pay (inter alia) the attorney and client costs of the striking off application.

10] Even more importantly, the Full Court saw fit to include the following provision:

“13. In the event of the Respondent failing to comply with any of the provisions referred to in this Order, the Applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South Africa, Act 106 of 1996 for the appropriate relief against the Respondent including but not limited to an Order for the committal of the Respondent to prison for the Respondent’s contempt of the provisions of the abovementioned paragraphs.”

11] Mr Teffo’s response to this order was neither an application for Leave to Appeal, nor an application in terms of Rule 45A.⁷ Instead, on 22 September 2022 he filed an application for rescission of the Strike Off order and, according to the LPC,

⁷ “45A. The court may suspend the execution of any order for such period as it may deem fit.”

continued to hold himself out and practise as an advocate.⁸ In his recission application, Mr Teffo alleges inter alia that:

(a) the judgment and order were erroneously sought or erroneously granted in his absence alternatively as a result of a mistake common to both parties;⁹

(b) the LPC had brought an application for his suspension and/or disbarment from practising as a legal practitioner and that the Court's order striking him off the roll was an unlawful and irrational decision as the Court had no jurisdiction to go outside of the application brought by the LPC;

(c) the LPC served papers under case number 24311/21 and the proceedings were heard under that case number and yet judgment was delivered under case number 10991/21 in respect of which he had never been served any papers;

(d) that as the court order incorrectly reflects the gender of Nyathi J as "she", whereas the Honourable Judge is a man - this mistake therefore, and according to him, vitiates the order.

12] However, that application was never proceeded with – instead it was abandoned.¹⁰ In its place Mr Teffo launched a variation application on 1 November 2022 in which he *inter alia* argues that the matter under case number 10991/21 proceeded in his absence and without his receiving these papers which thus renders the judgment and order null and void. He also argues that the application under case number 24311/21 remains extant and must be adjudicated. The LPC opposed that application and eventually, after all affidavits were filed, and when Mr Teffo had

⁸ I will deal with these allegations in due course

⁹ Rule 42(1)(a) and (c)

¹⁰ He says that he "replaced it with a Variation Application"

failed to set the matter down for hearing, the LPC did so. According to them, Mr Teffo was notified of the date of set down (a fact which he denies). On 6 March 2023 and in default of Mr Teffo's appearance, Kumalo J struck the matter from the roll with attorney and client costs. It is common cause that this application was not re-enrolled for hearing.

13] On 2 May 2023, Mr Teffo then filed a Rule 7 notice. It reads as follows:

"KINDLY TAKE NOTICE that the Applicant hereby disputes the authority of Hlaleleni Kathleen Dlpeu (sic) to depose to the Answering Affidavit and oppose the present application on behalf of the Respondent in these proceedings.

KINDLY TAKE NOTICE FURTHER that the Applicant disputes the authority and mandate of Mothle Jooma Sabdia Incorporated to act on behalf of the Respondent in these proceedings.

TAKE NOTICE FURTHER that the Respondent cannot proceed with the current opposition, unless the deponent to the Answering Affidavit and Mothle Jooma Sabdia Incorporated satisfy the above Honourable Court that they are in fact duly authorised to depose to the Answering Affidavit and act on Behalf of the Respondent in these proceedings."

14] On 9 May 2023 the LPC launched the present Contempt Application. It was set down for hearing in the urgent court for 23 May 2023. It seeks Mr Teffo's suspended committal to prison for one year should the court find him in contempt of the Strike Off order. The deponent to the Contempt Application is Ms Keetse who, at 9 May 2023, was the Provincial Chairperson of the LPC and she is the deponent to all the affidavits in the contempt proceedings. The resolution of the Gauteng National Office of the LPC authorising those proceedings reads as follows:

- “1. *An urgent application of contempt of court be brought against Mr Malesela Daniel Teffo in the High Court of South Africa, Gauteng Local Division, Pretoria, and that the attorneys of the Council be instructed to take all necessary steps to give effect to this resolution on behalf of the Council AND THAT;*
2. *The National and/or Provincial Chairperson and/or any other member of the executive committee be and they are hereby authorised to sign all documents necessary to give effect to this resolution on behalf of the Council; and*
3. *Any act by either of the person authorised in terms of para 2 above prior to the adoption of this resolution is hereby ratified.”*

15] The hearing before Koovertjie J was postponed because Mr Teffo had yet to file his answering affidavit despite being called to do so on/before 16h00 on 16 May 2023 in the LPC’s notice of motion. When he did so on 2 June 2023, it was not accompanied by an application for its late filing – that was filed later.¹¹ Instead, on 2 June 2023, Mr Teffo filed another Rule 7 notice pertaining to the Contempt Application. This one reads as follows:

“KINDLY TAKE NOTICE that the Respondent hereby disputes the authority of Puleng Magdeline Keetse to depose to the Founding and Supplementary Affidavits and bring the present application on behalf of the Applicant in these proceedings.

KINDLY TAKE NOTICE FURTHER that the Applicant disputes the authority and mandate of Mothle Jooma Sabdia Incorporated to act on behalf of the Respondent in these proceedings.

TAKE NOTICE FURTHER that the Applicant cannot proceed with the current opposition, unless the deponent to the Founding and Supplementary Affidavits, and Mothle Jooma Sabdia Incorporated satisfy the above Honourable Court that they are

¹¹ I do not intend to deal with this as, although it was initially opposed by the LPC, it was common cause before me that the matter should be adjudicated on all the filed papers

in fact duly authorised to depose to the Founding Affidavit and act on behalf of the Applicant in these proceedings.”

Both the Rule 7 notices were responded to in the LPC's replying affidavit and the resolutions attached thereto.

16] On the same date, Mr Teffo filed a counter-application in which he seeks the following relief:

- “1. *That Ms Keetse lacks the necessary authority and locus standi to represent and institute the contempt of court application on behalf of the Applicant.*
2. *That Ms Matolo-Dlepu lacks the necessary authority and locus standi to represent and oppose the Variation Application on behalf of the Applicant.*
3. *That Mothle Jooma Sabdia Incorporated lacks the necessary authority and locus standi to represent and institute the contempt of court application on behalf of the Applicant.*
4. *That Mothle Jooma Sabdia Incorporated lacks the necessary authority and locus standi to represent and oppose the Variation Application on behalf of the Applicant.*
5. *Declaring that the Respondent's Variation Application remains pending before the Court and is sub judice.*
6. *Declaring that the institution and prosecution of the Contempt Application by the Applicant against the Respondent, in the face of the pending Variation Application, undermines the authority of the Court in the latter Application and thus in contempt of the proceedings in that Application.*
7. *Declaring that the Applicant is, at this stage and until the Variation Application pending before the Court is finalised, not entitled to institute and/or pursue the enforcement of the striking off Order.*

8. *That the Applicant pay the costs of the Counter-Application, if it opposed same.*"

17] One must bear in mind that at no stage prior to this had Mr Teffo sought any interdictory relief, nor brought proceedings to suspend the Strike Off order pending the outcome of either his rescission or his variation applications.

18] On 6 June 2023, Mr Teffo then filed a Rule 35(13) notice in which he persists with his argument regarding the Rule 7 notices. The reason for this, he argues, is that the LPC has only partially answered his notices and that the reply provided creates a "*direct and clear conflict*" vis-à-vis the authority to launch the strike off application and the contempt application. The Rule 35(13) application states:

"KINDLY TAKE NOTICE that the Respondent hereby calls upon the Applicant to, within 10 (ten) days hereof, furnish particulars as to the full name and residential address of the chairperson(s) and each of the members of the Applicant being the Council as at the dates of 30 November 2020 and 22 May 2023, including the notices in terms of which the relevant meetings of the Council were convened and the Agenda, record and minutes of such meetings.

KINDLY TAKE NOTICE FURTHER that at the hearing of the matter, the Respondent will request the Court to give direction in terms of Rule 35(13), pertaining to the Respondent's Notice in the preceding paragraph."

19] On 7 June 2023 when the matter came before me, I issued directions regarding the filing of affidavits in all the main and interlocutory applications.¹² Mr Teffo then decided to amend his Notice of Motion in the Variation Application to

¹² Paragraph 3(i) of the court order states:

"Contempt Application

It is noted that all affidavits have been exchanged and no more affidavits may be filed."

include a rescission application, and file a supplementary founding affidavit.¹³ The amended notice of motion now reads:

- “1. *rescinding, varying and/or setting aside the Judgment and/or Order granted by “the Honourable Acting Justice Madam Bokako, and Honourable Justice **Madam** Nyathi (sic)” against the Applicant, on 16 September 2022 under the case number 10991/2021 [emphasis added];*
2. *alternatively, declaring that the proceedings and/or Judgment and Order under case number 10991/2021 are invalid and/or a nullity, and/or null and void ab initio...”*

20] Thus, at the hearing of this matter before me, the following applications were argued:

- (a) the contempt of court application;
- (b) the rescission/variation application;
- (c) the counter-application;
- (d) the Rule 7 application; and
- (e) the Rule 35(13) application.

21] As a finding that grants any one of Mr Teffo’s applications will scupper the Contempt Application, those will be adjudicated first.

THE RULE 7 AND RULE 35(13)

22] Effectively, the two notices have the same effect although they differ in scope. Both go firstly to the heart of the Striking Off, Variation and Contempt proceedings,

¹³ The supplementary affidavit was authorised by my court order

secondly to the deponents' authority to depose to all the LPC's affidavits, and thirdly to the issue of the mandate of MJS as the LPC's attorneys of record.

23] Although neither of the two Rule 7 notices is aimed at the Striking Off application,¹⁴ vigorous argument was presented that the resolutions put before court did not authorise the institution of the Strike Off application. It was also the aim of the Rule 35(13) to seek information regarding the members of the committee that took the decision to institute those proceedings because Mr Teffo disputes that the resolutions were properly taken.

24] The resolutions of the LPC have been set out in paragraphs 4 and 14 *supra*. There is one more resolution that is relevant and that is the one (also) dated 22 May 2023 by Mr Myburgh, the Chairperson of the LPC, which states:

"In my capacity as Chairperson of the Council, and in terms of the Council's resolution dated 27 November 2021, I hereby authorise Ms P M Keetse to depose to all affidavits that may be required to be signed on behalf of the Council in the proceedings against the abovementioned legal practitioner(s)/candidate legal practitioner/firm/APPLICANT."

In re: The Strike Off application

25] Mr Teffo argues that neither Ms Matolo-Dlepu nor MJS were authorised to institute a Striking Off application. They were only authorised to apply for his suspension. He argues that by virtue of the fact that the LPC is bound to the provisions of the resolution of 30 November 2020, and that Ms Matolo-Dlepu and MJS exceeded their mandate, they acted *ultra vires* the resolution and had the Full

¹⁴ The one is aimed at the Variation Application and the other at the Contempt Application

Court been aware of this fact, it would not have granted the Strike Off order. Thus he argues the order was erroneously sought and erroneously granted in terms of Rule 42(1)(a).

26] But Mr Teffo's argument simply does not pass muster. Rule 7 provides:

“(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.”

27] It is common cause that Mr Teffo at no stage prior to the judgment of the Full Court, challenged the mandate of either Ms Matolo-Dlepu or MJS. In **Kaap-Vaal Trust (Pty) Ltd v Speedy Brick and Sand CC**¹⁵ the court explained the purpose of Rule 7 thus:

“17. In the present application, no application for condonation was brought to enable the applicant to dispute the authority of Van Der Merwe and Associates, outside of the ten-day period, nor was leave of the Court on good cause shown sought by the applicant.

18. The point in limine, this Court cannot simply ignore, more so in circumstances where no attempt has been made by the applicant to explain the delay in challenging the authority of the respondent.

19. The 10-day time period within which the authority of another can be challenge, is not merely superfluous. This time period is set, so as to bring certainty to the

¹⁵ (23143/2020) [2021] ZAGPPHC 668 (18 October 2021) at para [17] – [20]

litigants that no challenge will be mounted against their authority, and where this challenge is mounted outside of the 10-day period on notice, that this challenge can only be mounted with leave of the Court and on good cause shown. The rule thus gives direction and permission that a challenge can still be mounted outside of this 10-day period, but only with leave of the Court and on good cause shown. In the present instance, no leave was also sought by the applicant.

20. This is not an insignificant point to merely be ignored by a Court, as it would mean, that on a mere whim of an opponent, the mandate of an attorney concerned may be challenged. Where a litigant fails to adhere to any time limit provided for in any rule of court, rule 27(3) specifically permits such litigant to seek condonation for its non-compliance.”

28] At no stage was a Rule 27(3) application brought either before the Full Court or before me. In my view, Mr Teffo is barred from raising this challenge to the Strike Off application at this late stage. Furthermore, his challenge insofar as Ms Matolo-Dlepu’s affidavits are concerned similarly falls to be rejected: she is, at best, a witness with personal knowledge of the facts in respect of which she gives account under oath. In **Ganes and Another v Telecom Namibia Ltd**¹⁶ the Supreme Court of Appeal (SCA) held that it is irrelevant whether a deponent has been authorised to depose to the founding affidavit – it is the institution and prosecution of the matter that must be authorised. The court then went on to state that where a firm of attorneys had confirmed that they were appointed to act on behalf of a party and that statement had not been challenged *“[i]t must therefore be accepted that the institution of the proceedings was duly authorised.”*

¹⁶ [2004] 2 All SA 609 (SCA) at para [19]

29] In **Eskom v Soweto City Council**¹⁷ the court stated:

“...The case displayed in the past about proof of authority was rational. It was inspired by the fear that a person may deny that he was a party to litigation carried on in his name. His signature to the process, or even when that does not eventuate, formal proof of authority would avoid undue risk to the opposite party, to the administration of justice and sometimes even to his own attorney.

The developed view adopted in Court Rule 7(1), it that the risk is adequately managed on a different level. If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant. There is no need that any other person, whether he be a witness or someone who becomes involved especially in the context of authority, should additionally be authorised. It is therefore sufficient to know whether or not the attorney acts with authority.

As to when and how an attorney’s authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1). Courts should honour that approach...”

30] This view was endorsed in **Ganes**.¹⁸ It is clear that once a party has failed to file the Rule 7 notice within 10 days in terms of the rule, it is accepted that the proceedings are duly authorised. Furthermore, MJS have been the LPC’s attorneys of record throughout and until this late stage, their mandate has never been in doubt. The resolution in any event specifically authorises the LPC’s attorneys to launch the applications. This being the position, the horse has bolted.

¹⁷ 1992 (2) SA 703 (W) at 705

¹⁸ Ibid. And see PM v MM and Another 2022 (3) SA 403 (SCA) and Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 (SCA) at para [14] – [16]

31] Furthermore, the submission that the LPC was bound by the resolution of November 2020 to apply for Mr Teffo's suspension only and that by seeking his striking off it rendered the application *ultra vires* and therefore a nullity is similarly without merit. In **Law Society, Northern Provinces v Mogami and Others**¹⁹ the court stated:

*"[4] Applications for the suspension or removal from the roll require a three-stage enquiry. First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry. Second, it must consider whether the person concerned is 'in the discretion of the court' not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. And third, the court must enquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice"*²⁰

32] Thus, irrespective of whether it is an application for striking off or suspension that serves before it, the court must still apply the above criteria. *In casu*, the Full Court was well aware of what was before it. The court was also well aware of the criteria that was to be applied when deciding whether Mr Teffo was fit and proper and, ultimately, exercised its discretion as to the sanction to be imposed. The LPC is the *custos morum* of the legal profession. It does no more than place facts before a court for a decision. It is for the court to weigh up those facts and decide whether the practitioner is fit and proper to remain in practice. In **Wild v Legal Practice**

¹⁹ 2010 (1) SA 186 (SCA).

²⁰ Case references removed

Council,²¹ after analysing the history and powers of the court via-a-vis the advocates profession, the following was stated:

“[62] *Therefore, an application to suspend or strike an advocate (or an attorney) from the roll was not the pursuit of a cause of action in the true sense. The applicant merely submitted to the Court facts which it contended constitute unprofessional conduct and then left it to the Court to determine how it should deal with the respondent in question. These were in fact sui generis or distinctive proceedings as opposed to ordinary civil litigation (see van Blommestein, Professional Practice for Attorneys, (1965), p 89 where this is explained with reference to the previous Law Societies as applicants, but the same principle also applied to the Bars as applicants, and still applies today).*” (my emphasis)

33] S 44²² of the LPA makes it clear that that Act has not altered this common law right – rather it has been preserved by virtue of those provisions.

34] The above is simply a restatement of the principle set out in a long line of decisions and confirmed in **Johannesburg Society of Advocates and Another v Nthai and Others**²³ that proceedings of this nature are *sui generis*, and

“[16] ...As Nugent JA observed in *Van der Berg v General Council of the Bar of South Africa*²⁴:

²¹ (31120/2019) [2023] ZAGPPHC 521 (19 May 2023) at para [62]

²² “44. (1) *The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.*

(2) *Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate legal practitioner or juristic entity or in connection with any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.*”

²³ 2021 (2) SA 343 (SCA)

²⁴ [2007] 2 All SA 499 (SCA) at para [2]

'Proceedings to discipline a practitioner are generally commenced on notice of motion but the ordinary approach as outlined in Plascon-Evans is not appropriate to applications of that kind. The applicant's role in bringing such proceedings is not that of an ordinary adversarial litigant but is rather to bring evidence of a practitioner's misconduct to the attention of the court, in the interests of the court, the profession and the public at large, to enable a court to exercise its disciplinary powers.' ”

35] This being so, and the notice of motion being framed in the alternative, the Full Court applied its mind to the facts before it and formed the view that Mr Teffo's conduct was so egregious that the only outcome was to strike him from the roll – this much is clear from the judgment.

36] The argument in respect of the Rule 35(13) goes a little further: it is that it is apparent that no investigation or disciplinary enquiry was conducted into Mr Teffo's conduct and the complaints against him – the LPC simply launched the striking off/suspension application. He argues that he requires the information set out in that notice in order to conduct his own enquiry into why the LPC decided as it did and who sat on that committee as there may have been those members who did not agree that the application should be launched without an investigation being conducted first. He argues that he is entitled to know who on EXCO authorised the application.

37] He also argues that s 17 of the LPA²⁵ makes it clear that only a majority is required to launch such an application, or that if the decision is deadlocked, the

²⁵ “(1) A decision of the majority of the members of the Council constitutes a decision of the Council.
(2) In the event of a deadlock in the voting the chairperson has a casting vote in addition to a deliberative vote.”

chairperson has the deciding vote. Thus he argues that he requires the information to see whether this actually occurred, and which of the LPC members cast a vote to launch the Strike Off application.

38] But this is just a fishing expedition. There are no facts upon which to base this argument. Furthermore, if indeed there was a majority of one or the chairperson cast the deciding vote to launch the application, that is all that is required. In my view, apart from this fishing expedition, Mr Teffo is simply out of time – the time to have sought this information (if indeed he was entitled to it at all) was prior to the judgment of the Full Court. But he did not. And he being a seasoned practitioner and litigator of 14 years standing, he should know the Rules of Court and know when and how to utilise them.

39] Thus insofar as the Rule 35(13) and Rule 7 applications relate to the Strike Off application, they are without merit. There are no grounds upon which I can find that Rule 42(1)(a) or (c) is applicable.

The Contempt application

40] Mr Teffo argues that there is only one resolution authorising the launch of the contempt application - that of 22 May 2023. This, he argues is problematic not only because it occurred *ex post facto* but also because the National Office of the LPC resolved to launch the application²⁶. He argues that the fact that the resolution ratifies all acts "*by either of the persons authorised*"²⁷ taken prior to the adoption of

²⁶ As opposed to the Provincial Office that authorised the Strike Off application

²⁷ Being the National and/or Provincial Chairperson and/or any other EXCO member

the resolution is irrelevant and that the resolution by the Chairperson of the National LPC on 22 May 2023²⁸ is also untoward.

41] But what this entire line of argument completely ignores is paragraph 13 of the Strike Off order which specifically authorises these proceedings. It also ignores the fact that, as *custos morum* of the legal profession the LPC does not need to show the classical *locus standi* and special authorisation to institute these proceedings: firstly because it must act in accordance with its role as delineated in the LPA which is to ensure accountability of the legal profession to the public²⁹ and to protect and promote the public interest³⁰; secondly, s 6(1)(a)(v) entitles the LPC to institute or defend legal proceedings on behalf of the Council;³¹ thirdly, because where a respondent is acting in defiance of a suspension/striking off order the LPC is obliged to bring that to the attention of the Court in order not only to protect the integrity of the profession vis-a-vis the court, but also in order to protect innocent members of the public; and fourthly because, in this case, the court order itself not only entitles the LPC to do so, but obliges it to do so.

42] In my view, the resolutions of 22 May 2023 are entirely proper. They, in any event, ratify all actions taken prior to the adoption of the resolution.

²⁸ Paragraph [24] supra

²⁹ Preamble to the LPA

³⁰ S 3(d) of the LPA:

“3. The purpose of this Act is to—

...(d) protect and promote the public interest...”

³¹ “6. (1) (a) In order to achieve its objects referred to in section 5, and, having due regard to the Constitution, applicable legislation and the inputs of the Ombud and Parliament, the Council may—

...(v) institute or defend legal proceedings on behalf of the Council”

43] Insofar as Ms Keetse's authority to depose is concerned, that argument must suffer a similar fate to that proffered in respect of Ms Matolo-Dlepu – no authority is necessary for her to depose as she is simply the LPC's witness.³² Insofar as a resolution is required, that resolution has been taken and all prior steps ratified.

44] Given the above, the Rule 35(13) and Rule 7 applications vis-à-vis the Variation and Contempt applications, are without merit and fall to be dismissed.

THE RECISSION/ VARIATION APPLICATION

45] Whilst some of the attack against the Strike Off order was devoted to the authority/ mandate of MJS and the deponents, Mr Teffo also put forward arguments regarding why that order should be rescinded / varied under Rule 42(1)(a).³³

The failure to institute disciplinary proceedings

46] It is not in dispute that Mr Teffo did not face a disciplinary hearing prior to the Strike Off application being launched. He argues that the failure by the LPC to take this step violates the provisions of the LPA and rules of natural justice. But this argument was rejected in **Law Society of the Northern Provinces v Morobedi**³⁴ where the SCA stated:

"The high court's reasoning was that it was not peremptory for the Council to have pursued a formal charge before a disciplinary committee, if in its opinion, the respondent was no longer considered to be a fit and proper person to remain in

³² Joubert v South African Legal Practice Council (5220/2022) [2023] ZAFSHC 70 (16 March 2023) at para [46] – [47]

³³ "(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:
(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby..."

³⁴ (1151/2017) [2018] ZASCA 185 (11 December 2018) at para [25]; Cape Law Society v Gihwala [2019] 2 All SA 84 (WCC) at para [110]

practice as an attorney. I agree with this conclusion. In general it is correct that the Council may proceed with the application for striking off of the practitioner or for his or her suspension from practice without pursuing a formal charge before a disciplinary committee if in its opinion, having regard to the nature of the charges, a practitioner is no longer considered to be a fit and proper person.”

47] There is thus no merit in the argument that the failure to pursue disciplinary proceedings renders the decision to institute the striking off/suspension application unlawful or *ultra vires*.

The mistaken gender of a member of the Full Court

48] Although this issue was eventually conceded during the hearing, it is necessary to set it out because of the issues that will be canvassed when discussing later arguments raised by Mr Teffo.

49] In both his original answering affidavit, his original rescission application, the first variation application, the amended rescission/ variation application and in his Heads of Argument, Mr Teffo took issue with a patent error in the court order: the court order states that the presiding judges were “Madam Justice Nyathi” and “Madam Justice Bokako AJ”. It is common cause that Nyathi J is a man and the order should have referred to him as “The Honourable Mr Justice Nyathi”. This much was eventually, and correctly so, conceded in argument. However, up to that stage, that patent error formed the backbone of one of Mr Teffo’s arguments that the judgment and order of 16 September 2022 was materially defective and that “as a result of the error qualified to be rescinded/ varied under Rule 42(1)(b) and (c) and or common law”. The fact is that even were one to have regard to the fact that he

litigated in person until the appearance before Koovertjie J on 23 May 2023, Mr Teffo was a seasoned practitioner and the concession should have been made prior to (or in) the amended recission/ variation application.

50] Given that Mr Teffo appeared before the Full Court in person and argued his matter, he knew very well the identity of both judges and their gender. He was also well aware of the case against him. It certainly ill behoves him to put forward such a meritless defence. Insofar as the error does not go to the substance of the Full Court's order, the parties were in agreement that it could be varied in terms of Rule 42(1)(b).³⁵

The two different case numbers

51] The history of case number 10991/21 and case number 24311/21 has been set out *supra*. Mr Teffo argues that he received only the application launched under case number 24311/21 and that all the affidavits were filed in respect of that application. Thus, he argues, the application under case number 24311/21 is still pending as the one disposed of was that under case number 10991/21.

52] The further effect of this, he argues, is that his appearance before court was in respect of case number 24311/21 and because judgment was handed down under case number 10991/21, it was done in default of appearance which renders it susceptible to recission. It is, however, clear that Mr Teffo argued the Strike Off application fully before the Full Court. He was thus in a position to place facts before the court in order to persuade it that the relief sought should be refused.³⁶ In **Zuma v**

³⁵ HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd 2022 (5) SA 373 (SCA)

³⁶ Stander v ABSA Bank 1997 (4) SA 873 (E) at 882E-G

Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State³⁷

(the **Zuma** recission judgment), it was stated:

“...As I see it, the issue of presence or absence has little to do with actual, or physical, presence and everything to do with ensuring that proper procedure is followed so that a party can be present, and so that a party, in the event that they are precluded from participating, physically or otherwise, may be entitled to recession in the event that an error is committed, I accept this. I do not, however, accept that litigants can be allowed to butcher, of their own will, judicial process which in all other respects has been carried out with the utmost degree of regularity, only to them ipso facto (by that same act), plead the “absent victim”. If everything turned on actual presence, it would be entirely too easy for litigants to render void every judgment and order ever to be granted, by merely electing absentia (absence).”

53] Mr Teffo cannot state that he was not heard or given the opportunity to make submissions and put his case before court. He filed papers and was present and presented his argument. The fact that his version was rejected does not mean the order falls to be rescinded under Rule 42 or the common law. The fact that he refused to appear to note the judgment similarly does not render it being granted in his absence. That concept covers the situation where a respondent was not heard at all ie no affidavit was filed and no argument was presented. Mr Teffo’s situation is a far cry from that. And to create a case where one might uphold that argument would create such an absurdity that it can only be rejected – otherwise all parties, fearing their version would be rejected, would refuse to appear to note a reserved judgment and then argue that it was granted “in their absence”.

³⁷ 2021 (11) BCLR 1263 (CC) at paras [56] – [61] and specifically para [60]

54] But the argument goes further: it was argued that irrespective of which case number one looks at the papers are irreparably defective – the notice of motion in case number 24311/21 is not supported by a founding affidavit as the one that accompanied it bears case number 10991/21, and the affidavit under case number 10991/21 has no notice of motion bearing that case number.

55] Thus, given all of this, Mr Teffo argues that the judgment/order falls to be set aside under Rule 42(1)(a) or (c) or the common law.

56] But on his own version this argument is incorrect. It is so that the notice of motion under case number 24311/21 was accompanied by a founding affidavit bearing case number 10991/21, but Mr Teffo filed an answering affidavit. As the argument presented is that the notice of motion under case number 24311/21 has no founding affidavit, it begs the question as to how Mr Teffo filed an *ad seriatum* response to that application and what allegations he responded to. On his own version, it could only have been the affidavit filed under case number 10991/21. This being so, it is clear that the “confusing case number” argument is nothing more than an obfuscation. There is also no “*pending matter*” under case number 24311/21 – insofar as that case number is concerned it is clear that that case number was erroneously issued when the matter was re-enrolled on the ordinary roll (as was argued by the LPC) and the entirety of the matter has been disposed of on its merits. It is clear that the only difference between the two notices of motion is that case no 10991/21 contains a prayer for relief in terms of Rule 6(12). Mr Teffo raised the issue regarding the case numbers before the Full Court and argued his case. It was fully

ventilated before the Full Court and dismissed. The argument is as devoid of merit now as it was then.

57] It was also argued that the Full Court should never have struck Mr Teffo off the roll – that a suspension order was the more appropriate sanction. This argument is founded on the following:

(a) the LPA brought about a new constitutionally inspired order where transformation, education and transfer of skills form the cornerstones of the LPA – these were manifestly absent from the old order Act and, in the present a case, the Admission of Advocates Act no 74 of 1964;

(b) it is common case that Mr Teffo was admitted under the latter act, that he was a member of the Independent Bar and that he was not registered with the LPC as a Trust Account Advocate and as a result not required to hold a fidelity fund certificate (which he does not);

(c) given that, as an Independent Advocate, he received no formal training, he could not, and cannot, be held to the high standards applied those who had received that benefit. Thus, so the argument goes, he should have been treated with more leniency by the Full Court.

58] The argument is astonishing. The fact that Mr Teffo is of the view that as an admitted advocate he should be held to a lesser standard than all other legal practitioners is simply demonstrative of his lack of appreciation of the basic fundamentals that are the cornerstone of the profession which are honesty, integrity and diligence and which are determinate whether or not he is fit and proper – this is not only in respect of whether he should be admitted to the profession but also

whether he should face sanction by a court if he falls short of those standards. In an article titled "*Madiba would have agreed: "The law is for protection of the people"*"³⁸, Van der Westhuizen J stated:

"Judges and other lawyers must in my modest view have certain qualities to apply and practise law as it should be done. Our Constitution requires judges and the National Director of Public Prosecutions to be "fit and proper persons". For legal practitioners similar standards exist.

In addition to requirements regarding qualifications, citizenship, and so on, lawyers (and judges in particular) need (in no specific order) –

- *integrity;*
- *intellect;*
- *a strong work ethic;*
- *respect for people;*
- *a sound value system;*
- *independence; and*
- *a sense of humour.*

Integrity is not negotiable. It is the first and the last word. Without it, the other qualities are either impossible (like independence), or dangerous (like intellect and knowledge of the law)...

These seven qualities overlap and operate together..."

59] The further problem with Mr Teffo's argument is that, on his own version, he was admitted in 2009. This being so, and – again on his own version – he has appeared in many high profile and complex matters. He should certainly, after 14 years of practise, know what is expected him. He has absolutely no excuse for his

³⁸ [2013] DEJURE 46

conduct. Furthermore, Mr Teffo nowhere takes issue with any of the facts set out in the application to strike to motivate why that order should not have been granted. In fact, all his arguments are those of a highly emotive and technical nature. One can also not lose sight of the fact that he did not appeal the Strike Off order – instead he chose to bring a recission/ variation application based on technical points.

60] Given that there is no merit in any of the above arguments, they are dismissed.

THE COUNTER-APPLICATION

61] In his counter-application, Mr Teffo seeks the following relief:

- “1. *That Ms Keetse lacks the necessary authority and locus standi to represent and institute the contempt of Court Application proceedings on behalf of the Applicant.*
2. *That Ms Matolo- Dlepu lacks the necessary authority and locus standi to represent and oppose the Variation Application on behalf of the Applicant.*
3. *That Mothle Jooma Sabdia Incorporated lacks the necessary authority and locus standi to represent and institute the contempt of Court application proceedings on behalf of the Applicant.*
4. *That Mothle Jooma Sabdia Incorporated lacks the necessary authority and locus standi to represent and oppose the Variation Application on behalf of the Applicant.*
5. *Declaring that the Respondent’s Variation Application remains pending before the Court and is sub judice.*
6. *Declaring that the institution and prosecution of the Contempt Application by the Applicant against the Respondent, in the face of the pending Variation Application, undermines the authority of the Court in the latter Application and thus in contempt of the proceedings in that Application.*

7. *Declaring that the Applicant is, at this stage and until the Variation Application pending before the Court is finalised, not entitled to institute and/or pursue the enforcement of the striking off order...*

62] As I have already dealt with the issues relating to Prayers 1, 2, 3 and 4 of the Counter-Application, I will deal only with Prayers 5, 6 and 7. The costs of the counter-application will be dealt with at the end of this judgment.

63] Mr Shakoane conceded that Prayer 5 is no longer relevant as this court is dealing with the matter in its entirety. Thus the question now is whether or not the LPC was entitled to pursue the contempt application in the face of the variation application.

64] One cannot lose sight of the fact that the original recission application was launched by Mr Teffo on 22 September 2022, a week after he was struck off the roll – the application was abandoned. On 1 November 2022 he then launched the original variation application which the LPC opposed. It was set down for hearing by the LPC when Mr Teffo failed to do so and the court struck it from the roll on 6 March 2023. By the time the contempt application was launched on 9 May 2023, some two months later, Mr Teffo had still failed to take any steps in the furtherance of that application. Even after the Contempt application was launched, Mr Teffo failed to ask for any interim relief in terms of Rule 45A, or to set down his variation application for adjudication. Instead, almost a month later on 2 June 2023 the counter-application was launched and on 22 June 2023 an amended notice of motion filed.

65] I can find nothing improper in the conduct of the LPC. It cannot be disputed – and is in fact conceded in argument – that a variation application does not suspend the operation of the Strike Off order. Given Mr Teffo’s alleged conduct subsequent to that order, the LPC acted entirely properly in bringing his conduct to the attention of the court as expeditiously as possible. In any event, it could never be so that a party could delay a hearing and avoid contempt proceedings in circumstances such as the present. If Mr Teffo’s argument is upheld, he could launch his variation application and never set it down, thus effectively stymieing the LPC from ever launching contempt proceedings. The situation would create an absurdity which can never foster the effective administration of justice and would make a mockery of the efficacy of judgments and orders. It would also mean that Mr Teffo could never be held accountable for his actions.

66] There is thus no merit in the counter-application and it falls to be dismissed.

THE CONTEMPT OF COURT APPLICATION

67] In **Fakie v CCII Systems**,³⁹ (Fakie) Cameron JA described contempt of court as follows:

“[6] *It is a crime unlawfully and intentionally to disobey a court order.*⁴⁰ *This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court.*⁴¹ *The*

³⁹ 2006 (4) SA 326 (SCA) at para [6]

⁴⁰ *S v Beyers* 1968 (3) SA 70 (A).

⁴¹ Melius de Villiers *The Roman and Roman-Dutch Law of Injuries* (1899) page 166: ‘Contempt of court ... may be adequately defined as an injury committed against a person or body occupying a public judicial office, by which injury the dignity and respect which is due to such office or its authority in the administration of justice is intentionally violated.’ Cf *Attorney-General v Crockett* 1911 TPD 893 925-6 per Bristowe J: ‘Probably in the last resort all cases of contempt, whether consisting of disobedience to a decree of the Court or of the publication of matter tending to prejudice the hearing of a pending suit or of disrespectful conduct or insulting attacks, are to be referred to the necessity for protecting the fount of justice in maintaining the efficiency of the courts and enforcing the supremacy of the law.’

offence has in general terms received a constitutional 'stamp of approval',⁴² since the rule of law – a founding value of the Constitution – 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained'."

68] This form of contempt was described in **S v Mmamabolo (ETv and Others Intervening)**⁴³ as *scandalising the court*" and *"involved any publication or words which tend, or are calculated, to bring the administration of justice into contempt, amount to a contempt of Court. Now, nothing can have a greater tendency to bring the administration of justice into contempt than to say, or suggest in a public newspaper that the Judge of the High Court of this territory, instead of being guided by principle ad his conscience, has been guilty of personal favouritism, and allowed himself to be influences by personal and corrupt motives, in judicially deciding a matter in open Court."*⁴⁴

69] Thus, the first leg of the contempt is based on the manner in which Mr Teffo has conducted himself towards the court and its officers, as expressed in his affidavits.

70] The second leg of the contempt is based on what is alleged to be Mr Teffo's wilful disobedience of the Strike Off order. In this regard **Pheko and Another v Ekurhuleni City**⁴⁵ describes this contempt as

⁴² S v Mamabolo 2001 (3) SA 409 (CC) para 14, per Kriegler J, on behalf of the court (where contempt of court in the form of scandalising the court was in issue).

⁴³ 2001 (3) SA 409 (CC)

⁴⁴ Mamabolo at para [22] quoting Kotzé J in In re Phelan (1877-81) at 7

⁴⁵ 2015 (5) SA 600 (CC)

“[28] Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. This case deals with the latter, a failure or refusal to comply with an order of court. Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.”

71] The element of contempt and the standard of proof required at various stages is:

“42. To sum up:

- 1. The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*
- 2. The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.*
- 3. In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.*
- 4. But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.*

5. *A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.*⁴⁶

72] Thus, once the LPC has proved the order, service and non-compliance, Mr Teffo bears a evidential burden in relation to his wilfulness and *mala fides*. Should he fail to advance evidence that establishes a reasonable doubt as to whether his non-compliance was wilful and *mala fides*, contempt will have been established beyond reasonable doubt.⁴⁷

The grounds of the contempt application

73] It is common case in the present proceedings that Mr Teffo has failed – or refused – to:

- (a) surrender his certificate of enrolment to the Registrar of this court;
- (b) hand over his client files and books of account to the curator; and
- (c) pay the costs of the Strike Off application.

74] The further grounds advanced by the LPC are that:

- (a) he continued to appear in court, and presented himself, and/or acted, as a legal practitioner; and
- (b) continued to handle / operated his bank account used in receiving money from clients.

75] Mr Shakoane conceded during argument that the order was granted (ie it exists) and that Mr Teffo had knowledge of the order.⁴⁸ If I find that the LPC has

⁴⁶ Fakie at para [42]

⁴⁷ *Els v Weideman and Others* 2011 (2) SA 126 (SCA) at paras [66] – [67]

⁴⁸ By virtue of the fact that he brought a rescission application on 22 September 2022

successfully proven that Mr Teffo has disobeyed the Strike Off order, he then bears an evidential burden to demonstrate that his disobedience was neither wilful nor *mala fide*. He

attempts to do so by raising several defences:

- (a) that by launching the recission and then the variation applications, he was under the impression that the strike off order was suspended;
- (b) that the conduct complained of does not constitute contempt as by LPC's version is factually inaccurate/ incorrect;
- (c) that he had never intended to disobey the order.

I intend to deal with the grounds upon which contempt is alleged and the defence together.

The continued appearances

76] Prior to his striking off, Mr Teffo rented offices from City Property situated at 1st Floor, Suite 120-121, Protea Towers Building, 214 Pretorius Street, Pretoria. It appears that, as he failed to pay his rent, they barred him from accessing his office. On 20 April 2023, he brought a spoliation application in the Magistrate's Court against City Property and in that founding affidavit he describes himself as:

"I am self-employed as an Advocate practising at 1st Floor, Suite 120-121, Protea Towers Building, 214 Pretorius Street, Pretoria 0002" (emphasis provided)

77] Given that the spoliation application was brought by him 7 months after the Strike Off order, it is difficult to understand on what basis Mr Teffo could describe himself as a self-employed, practising advocate – he was not.

78] His response to these allegations is the following: that he had a dispute with his landlord about rental money (which he avers he had paid); that he went to the premises in order to collect his furniture; that he appeared at the hearing not as an advocate, but rather as an in person litigant.

79] But the problem with Mr Teffo's argument is manifest from the very founding affidavit in that spoliation application where he states:

- “9. The Applicant accepted the offer from the Respondent and paid the requested money into the account of the Respondent on the 11 April 2023.
10. The Applicant took occupation of the office as from the 11 April 2023 and delivered his office furniture and files.
11. On the 12 April 2023, the Applicant spent time in his office working and sorting out his urgent matters due to appear in Court on the 13 April 2023.
12. On the 13 April 2023, the Applicant also attended to his work from his office until such time that he then left to attend court proceedings on behalf of a client. The matter was rolled over to the next day, 14 April 2023, to continue as it was not completed.
13. On arrival from court back to his office, the Applicant found his office keys changed and his office locked.”

80] Thus, on his own version he did not want access to his office to collect his furniture – he wanted access to his office to continue his practice. Over and above

this, he never appealed the Strike Off order and therefore it was not suspended.⁴⁹ He also never brought any application to suspend the operation of the Strike Off order pending the outcome of his variation application.⁵⁰ Insofar as he alleges that he was under the impression that any of his applications effectively suspended the operation of the Strike Off order, it was conceded during argument that they do not.

81] But what he completely fails to address is the substance of paragraph 79 supra. In fact, in the recission/variation application, and the answering affidavit to the contempt application, he gives out his address as “*1st Floor, Suite 120-121, Protea Towers Building, 214 Pretorius Street, Pretoria*” and in all other affidavits as “*5th Floor, Protea Towers, 214 Pretorius Street.*”

82] It thus appears that Mr Teffo is still using his office and holding out the address from which he has practised as his address.

83] Furthermore, in his original application for recission, Mr Teffo describes himself as follows:

“15. The Applicant in this recission application against the judgment of the Legal Practice Council for disbarring is Malesela Daniel Teffo. The practising Advocate of the High Court of South Africa, having been admitted as such, on the 5th of January 2009...”

84] He proceeds to set out, in great detail, that he deems himself to be “*the best and most powerful Advocate, this country has ever produced*” and that he has also

⁴⁹ S 18 of the Superior Courts Act 10 of 2013

⁵⁰ Rule 45A

appeared in the Constitutional Court, the Labour Court, the Criminal Court and Magistrate's Court.

85] He also states in his original recission application that *“(t)he Applicant is currently involved in serious and important cases as the defence Counsel, if the operation of this judgment is not stayed until finalisation of the application, many people will be prejudiced.”* But there too he is hoisted by his own petard – he states this because he asks for the suspension of the Strike Off order in order to continue to practice. He thus fully appreciates that the order remains extant until it is suspended or set aside. He is therefore, on his own version, under no illusion that he cannot practise. His *volte face* subsequent to obtaining legal advice and his plea that he didn't understand that the order was operational simply ring hollow in light of the above and are no more than obfuscation. In any event, as a former practitioner of 14 years standing, with the wealth of experience he alleges he has, he must fully appreciate that *ignorantia juris non excusat* – this holds even more true for someone who actually practises law as his profession.

86] Despite this, when he appeared in his spoliation application and when he was challenged by the Presiding Magistrate Singh on 4 May 2023 as regards his ability to act as an advocate, Mr Teffo eventually confirmed that he continues to act as an advocate and represents clients. He also confirmed that he appeared on behalf of clients in the Labour Court on 13 April 2023 and stated that his continued bar from his chambers prejudices his clients and his practice. To now come in his amended recission/variation application and allege that he was under the impression that the Strike Off order was suspended must be viewed askance.

The appearance in the Labour Court

87] On 13 April 2023 Mr Teffo appeared in the Labour Court before Nkutha-Nkonywana J where his capacity to act as an advocate was again challenged by the court. Mr Teffo insisted that he was an advocate despite the Strike Off order. Mr Teffo does not dispute this interaction in his papers.

The Senzo Meyiwa murder trial

88] On 17 May 2023 Mr Teffo appeared, clothed in counsel's robes, before Maumela J and demanded to address the court. He purported to represent the brother of the deceased and stated that he had "*been given instructions*". He also informed the court that he "*had a watching brief*". This appearance took place a week after the contempt application had been served on him and thus Mr Teffo could have been under no illusion that the view of the LPC was that his conduct in continuing to act as an advocate, robed, taking instructions as such and holding himself out to be in practice, was contemptuous of the Strike Off order.

89] Mr Shakoane attempted in argument to excuse Mr Teffo's conduct by referring to the fact that Maumela J refused to entertain Mr Teffo. But that is no excuse for his behaviour in the first place. In fact, it appears that Maumela J was simply one of several presiding officers who had dealt with Mr Teffo's continued appearances as counsel on behalf of clients after his striking off – he was thus very well aware of the courts' view and yet he still doggedly continued to disobey the Strike Off order.

90] But, in essence, and apart from his actual defence on the papers regarding the spoliation application, the premise of which I have already demonstrated is palpably false, Mr Teffo raises no actual defence to the remainder of the facts put forward by the LPC to support the contempt application. Instead, his defences are technical in nature and none have any merit.

The order is not final and unambiguous

91] Mr Teffo has in addition to the defence on the respective charges of wilful non-compliance, one overarching defence. It finds its genesis in the argument that the order is ambiguous and falls to be rectified because firstly, it was given under an incorrect case number and secondly, because the order itself does not correctly reflect the judicial officers that presided. His argument is that it is only once the variation process has been completed and the order rectified that it becomes enforceable and that, until then, it is neither binding nor enforceable and he can only consider his appeal options after that. He argues that given this, he has acted reasonably and *bona fide* and that he had no intention to defy the Strike Off order. In this respect he states specifically:

“35.19 *Such an order⁵¹is, as I been doing, required to be brought before a court of competent jurisdiction being the court that is to decide the Variation Application, to be rescinded, varied and/or set aside, as the case may be. Having taken such a step and with the Variation Application being sub judice, I cannot be faulted nor fairly and/or reasonably said to have disrespected or defied the Order, and/or that I had acted mala fide.”*

⁵¹ ie the allegedly incorrect and ambiguous order because of the mistakes referred to supra

92] But this argument does not avail him. Until such time as it is set aside, an order of court must be obeyed.⁵² Thus, irrespective of Mr Teffo's reservations regarding the validity of the court order, he is bound to its terms. Were his view to be upheld, it would mean that an aggrieved litigant could simply choose to ignore an order without approaching a court in terms of s 17 or s 18 of the Superior Courts Act, or Rule 45A. That would subvert the authority of our courts and pose a serious threat to the public trust in the administration of justice and the enforceability of court orders in general. This is underscored by s165(5) of the Constitution which states:

"An order or decision issued by a court binds all persons to whom and organs of state to which it applies."

93] In **Department of Transport and Others v Tasima**⁵³ it was confirmed that in light of s 165(5) of the Constitution, an order is binding irrespective of whether or not it is valid until set aside. The approach taken in **Municipal Manager, OR Tambo Municipality and Another v Ndabeni**⁵⁴ underscores the fact that even where a party alleges that the court order is a nullity, and is of the view that it can therefore be disregarded with impunity, this is not so:

"[23] Trite, but necessary it is to emphasise this Court's repeated exhortation that constitutional rights and court orders must be respected. An appeal or review – the latter being an option in the case of an order from the Magistrate's Court – would be the proper process to contest an order. A court would not compel compliance with an order if that would be "patently at odds with the rule of law". Notwithstanding, no one should be left with the impression that court orders – including flawed orders – are not binding, or that they can be flouted with impunity."

⁵² *Bezuidenhout v Patensie Sitrus Beherend Bpk* 2001 (2) SA 224 (E) at 229B – C; *Phatudi v Phatudi* (514/2021) [2021] ZALMPPHC 35 (22 July 2021) at para [16]

⁵³ 2017 (2) SA 622 (CC) at paras [177] – [182]

⁵⁴ 2023 (4) SA 421 (CC) at paras [23] – [24]

[24] *This court in State Capture reaffirmed that irrespective of their validity, under section 165(5) of the Constitution, court orders are binding until set aside. Similarly, Tasima held that wrongly issued orders are not nullities. They are not void or nothingness, but exist in fact with possible legal consequences. If the judges that had the authority to make the decisions at the time that they made them, then those orders would be enforceable.*"

94] Mr Teffo thus had a constitutional duty, which he owed to the court, to obey its order.⁵⁵ This is even more important as he was, prior to his being struck off the roll, an officer of the court. Thus Mr Teffo's arguments can afford him no solace or respite from his duty towards the court and from his conduct.

95] As was stated in the **Zuma** contempt judgment⁵⁶: "*Contempt of court is not an issue inter-partes...; it is an issue between the court and the party who has not complied with a mandatory order of court.*" In this context, the LPC is simply a purveyor of facts – it is for the court to decide whether Mr Teffo is indeed in contempt.

96] When analysing his overall conduct and defence, it is clear that he does not, and indeed cannot, take issue with paragraph 1 of the Strike Off order – after all he is specifically named. The order is therefore directed at and to him. His argument in respect of the identity of the Bench is not directed at the substance of the order and it was conceded that this patent error could be corrected in terms of Rule 42(1)(c) by me. Mr Teffo also never attacks the substance of the order and does not deny that

⁵⁵ Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others 2021 (5) SA 327 (CC) at paras [59] – [61] – the **Zuma** contempt judgment

⁵⁶ Para [61]

he has not handed in his certificate or delivered his books or his client files (or briefs) to the curator. He lastly does not deny that he has not paid the costs of the Strike Off application. He has admitted that he appeared in the Magistrate's Court, in the Labour Court and before Maumela J whilst (in the latter two) on instructions of and representing clients. All his affidavits clearly point to his address as the one from which he actually continues to practise.

97] I have also dealt with the fact that despite his protestations, he was not – and could not ever have been – under any illusion that he was not entitled to practise despite launching his original variation application. In my view, Mr Teffo's conduct is clearly wilful and *mala fides* and the LPC has demonstrated, beyond reasonable doubt, that he is in contempt of the order issued on 16 September 2022.

THE SANCTION

98] In the **Zuma** contempt judgment⁵⁷ the court took into account the circumstances, the nature of the breach and the extent to which the breach is ongoing in determining the length of sentence to be imposed. In **Protea Holdings Limited v Wriwt and Another**⁵⁸ the court held that the factors a court will take into account when deciding what sentence to impose are, *inter alia*, the nature of the admitted contempt and the manner in which the Court order was breached.

99] The LPC submits that an order that Mr Teffo be sentenced to a suspended sentence of 12 months on condition that he comply with the provisions of the Strike

⁵⁷ At para [127]

⁵⁸ 1978 (3) SA 865 (W) at 869H

Off order. I am of the view that this is immanently reasonable given the following factors:

- (a) Mr Teffo knew he could not appear and yet donned counsel's robes in at least two forums despite two previous courts casting doubt on his ability to hold himself out as, and act as, an advocate on behalf of clients in the face of the Strike off order;
- (b) even after the contempt application was launched and he became aware of the grounds upon which the LPC alleged he had breached the terms of the Strike Off order, he paid no heed and continued with his impugned conduct;
- (c) he knew that neither his original recission application nor the original variation application suspended the operation of the Strike Off order and yet he appeared in defiance of it and in his amended papers put forward a defence that he knew to be false;
- (d) his intemperate, ill-considered and disrespectful stance towards the court, as evidenced in the affidavits he himself drafted, is also indicative of his ongoing contemptuous conduct.⁵⁹

100] His conduct evidences that of someone who is incapable of objectively evaluating himself. One can only but hope that the coercive nature of the suspended sentence will allow for some introspection.

COSTS

⁵⁹ In his own words: "*I will never be convinced by anyone in my entire life that the Judges are infallible as human beings. Therefore, my own observation of Judges are the most corrupt professional human beings, like the Presidents of the Countries*" (sic)

101] The LPC seeks a punitive costs order against Mr Teffo not only because of his contemptuous conduct, but also because he has inundated this court with extensive and meritless objections and applications; taken technical legal points that have no merit; brought about several delays with postponements because he has failed to adhere to timelines set in court orders and because he has refused to subject himself to the authority of the court. All of this has compelled the LPC to dedicate extensive time and resources to this matter.

102] Over and above this, regard must be had to the scandalous manner in which Mr Teffo conducted himself prior to the appointment of his present representatives: the intemperate and ill-considered language used in his original applications, his unbridled attack on the integrity of the judicial system and the judges that granted the Strike-Off order, his deliberate flouting of that order and the meritless technical defences put before this court to justify behaviour for which there no excuse.

CONCLUSION

103] I am therefore of the view that Mr Teffo is in contempt of the order handed down on 16 September 2022 and that a suspended sentence of 12 months should be imposed. I am also of the view that a punitive costs order against him is warranted in the circumstances, which will include the costs of two counsel.

THE ORDER

104] The order is the following:

1. The Court Order issued under case number 10991/21 on 16 September 2022 is amended/varied to reflect that the Presiding Judges

were The Honourable Mr Justice Nyathi and The Honourable Madam Acting Justice Bokako.

2. The Respondent, Malesela Daniel Teffo, is declared to be in contempt of court in disobedience of paragraphs 1, 2, 4, 6 and 12.6 of the Court Order issued under case number 10991/21 on 16 September 2022 (the Strike Off order).
 3. The Respondent, Malesela Daniel Teffo, is sentenced to imprisonment for a period of 12 months.
 4. The order set out in paragraph 3 above is suspended *in toto* on condition that the Respondent immediately complies in full with the Strike Off order.
 5. The Applicant shall be entitled to bring an application, whether urgent or otherwise, for an order that the suspended sentence be given effect to immediately should the Respondent continue to breach the strike off order.
 6. The Respondent's counter-application, Rule 7 application, Rule 35(13) application and recission/variation application are all dismissed.
 7. The Respondent is directed to pay the costs of the contempt application as well as all the applications mentioned in paragraph 6 supra on the attorney and client scale, which costs shall include the costs consequent upon the employment of two counsel and all reserved costs.
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NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 13 October 2023.

For the appellant	:	Adv Maleka SC, with him Adv Ka-Siboto and Adv Lindazwe
Instructed by	:	Mothle Jooma Sabdia Inc
For the respondent	:	Adv Shakoane SC, with him Adv Mabena and Adv Ntshangase
Instructed by	:	Molobi Inc Attorneys
Matter heard on	:	11 – 12 September 2023
Judgment date	:	13 October 2023