

**GroundUp News NPC and others v South African Legal Practice Council and others
[2023] JOL 59135 (GJ)**

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Case No: 20150 / 2021

Judgment Date(s): 24 / 05 / 2023

Hearing Date(s): 10 / 11 / 2022

Marked as: Reportable; Of Interest To Other Judges

Country: South Africa

Jurisdiction: High Court

Division: Gauteng, Johannesburg

Judge: Yacoob J

Bench: S Yacoob J

Parties: GroundUp News NPC (1At), Nathan Geffen (2At), Raymond Joseph (3At); The South African Legal Practice Council (1R), Chairperson of The South African Legal Practice Council (2R), Mr Y Mayet (3R), Gauteng Provincial Legal Practice Council (4R), Lesley Nkhumbuleni Ramulifho (5R)

Appearance: Adv N Ferreira, Adv K Harding-Moerdyk, Lionel Murray Schwormstedt & Louw (At); Adv R Schoeman, Elliot Attorneys Incorporated (5R)

Categories: Application – Civil – Substantive – Private

Function: Confirms Legal Principle

Relevant Legislation: Promotion of Administrative Justice Act 3 of 2000; Legal Practice Act 28 of 2014, Section 37

Key words

Legal Practice – Complaint against legal practitioner – Duties of Legal Practice Council

Mini Summary

The first applicant (“GroundUp”) published news and opinions online, focusing on the public interest and social justice. The second applicant was its editor and the third applicant (Mr Joseph) a journalist who had written for GroundUp. The fifth respondent (Mr Ramulifho) was an attorney who was featured negatively in a series of articles written by Mr Joseph about a recipient of grants from the National Lotteries Commission. Mr Ramulifho launched an urgent interdict application to prevent the publication of allegations about him, and to obtain the removal from GroundUp’s website of articles that referred to him. In a complaint to the Legal Practice Council (LPC), the applicants alleged that Mr Ramulifho, in prosecuting the interdict application, falsified documents and forged signatures on affidavits. After Mr Ramulifho responded to the complaint and the complainants replied, the complaint was referred to an investigating committee of the LPC made up of one person, the third respondent (Mr Mayet). The complaint was dismissed on the basis that Mr Ramulifho had given a reasonable explanation to the allegations made against him and that there was no reasonable prospect of a charge of misconduct against him succeeding. The LPC advised the complainants that no appeal was possible because an appeal tribunal had not yet been established.

Seeking review of the decision, the applicants contended that the dismissal of the complaint without any steps taken to investigate it was both procedurally and substantively unlawful.

Held that section 37(1) requires the LPC to establish investigating committees “to conduct investigations of all complaints of misconduct against legal practitioners”. It was clear that all

complaints must be investigated. The investigating committee must then satisfy itself either that the legal practitioner may be guilty of misconduct for which misconduct proceedings are warranted in terms of the Code of Conduct, on "the available *prima facie* evidence", in which case it refers the matter for adjudication by a disciplinary committee, or, that the conduct does not necessarily warrant misconduct proceedings, in which case the complaint must be dismissed. In this case, there was a complaint of conduct by a legal practitioner which the committee considered would constitute professional misconduct if true and if committed in a professional capacity. The committee did not investigate any further. Instead, it decided that the obligation to investigate ended at finding that the necessary evidence had not been provided by the complainant. The phrase "available *prima facie* evidence" meant that the committee did not have to decide whether a watertight case existed. It was not for the committee to evaluate the probity of the evidence. The committee had to evaluate only *prima facie* whether, if the evidence was found to be established, there would be a guilty finding.

In failing to conduct any investigation, the committee committed an error of law. The decision was also not rationally connected to the information before the committee. The court was satisfied that the decision to dismiss the complaint was reviewable, and that the applicants had made out a case for the relief sought.

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YACOOB J:

[1] The second and third applicants, Mr Geffen and Mr Joseph, together with Mr Louw, who is also the applicants' attorney of record, lodged a complaint with the first respondent ("the LPC") against the fifth respondent ("Mr Ramulifho"). The complaint concerned Mr Ramulifho's conduct in an application for an interdict against the first applicant ("GroundUp").

[2] The complaint was dismissed, and the LPC advised the complainants that no appeal would be possible because an appeal tribunal had not yet been established. The applicants seek to review the dismissal of the complaint.

[3] Only Mr Ramulifho opposed the application. He filed no affidavit, but delivered a notice in terms of rule 6(5)(d)(iii), raising points of law in opposition. He also delivered a notice to strike out certain paragraphs in the founding affidavit, but did not persist with the application to strike out.

[4] The fourth respondent ("the Gauteng LPC") filed an explanatory affidavit to describe the processes it followed, but does not oppose.

[5] There is therefore no factual dispute before the court, and the applicants' version of the facts is undisputed.

[6] GroundUp publishes news and opinions online, focusing on the public interest and in particular social justice. Mr Geffen is its editor and Mr Joseph a journalist who

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has written for GroundUp. Mr Ramulifho is an attorney, who featured negatively in a series of articles written by Mr Joseph about a recipient of grants from the National Lotteries Commission.

[7] Mr Ramulifho launched an urgent interdict application to prevent the publication of allegations about him, and to obtain the removal from GroundUp's website of articles that referred to him. He also sought a retraction. The application was struck for lack of urgency. Mr Ramulifho launched the application through his own firm and acted as his own attorney.

[8] The complaint to the LPC was based on allegations that Mr Ramulifho, in prosecuting this interdict application, falsified documents and forged signatures on affidavits. The allegations were of perjury and forgery, obviously serious allegations against an ordinary person, but which take on far more weight when made against an officer of the court, even when that person is acting in his personal capacity. This is because the integrity of officers of the court must be beyond question, as this impacts on the integrity of the whole system of the administration of justice.

[9] After Mr Ramulifho responded to the complaint and the complainants replied, the complaint was referred to an investigating committee of the LPC. The "committee" was made up of one person, the third respondent, Mr Mayet.

[10] The decision of the "committee" was to dismiss the complaint on the basis that he had "given a reasonable explanation to the allegations made against him" and that there was no reasonable prospect of a charge of misconduct against him succeeding. As I pointed out above, the LPC advised the complainants that no appeal was possible because an appeal tribunal had not yet been established.

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[11] The applicants contend that the dismissal of the complaint without any steps taken to investigate it is both procedurally and substantively unlawful.

[12] The reasons provided by the LPC for the dismissal of the complaint are, essentially, that:

12.1

the allegations would indicate professional misconduct if they are true, and if Mr Ramulifho conducted himself as alleged in his capacity as a **legal** practitioner;

12.2

the evidence presented in support of the complaint was insufficient, and the LPC required the allegations to be tested in another forum or somehow verified;

12.3

the LPC cannot investigate on hearsay allegations or insufficient evidence;

12.4

the complaint was seriously flawed; and

12.5

the *onus* was on the complainant to provide sufficient evidence to persuade the committee that a tribunal might or could find for the complainant.

[13] The affidavit filed by the Gauteng LPC sets out the steps taken once the complaint was received. The Gauteng LPC takes pains to explain that the affidavit in no way constitutes an attempt to oppose or justify, but simply to "lay bare" for the court's evaluation what was done, and that it abides the decision of the court.

[14] The Gauteng LPC acknowledges that Mr Mayet considered the matter only on the papers provided, that is, the complaint, Mr Ramulifho's response, which consisted

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purely of procedural objections, and the complainants' reply. He was of the view that the complaint should be dismissed because the conduct in question "did not necessarily warrant misconduct proceedings", for the reasons that Mr Ramulifho was not guilty of misconduct, that Mr Ramulifho had given a reasonable explanation for his conduct and that there was no reasonable prospect of success in a misconduct charge. This despite the fact that he also opined that, if the allegations were true, there was serious misconduct, and despite the fact that Mr Ramulifho had not given any explanation for his conduct, let alone a reasonable one.

[15] The applicants seek the review of the decision in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). They submit that even if the decision is not one in terms of PAJA, the same grounds found review in accordance with the principles of legality.

[16] The grounds on which the applicants rely are:

16.1 the Investigating Committee failed to comply with section 37(3) of the **Legal Practice** Act 28 of 2014 ("the LPA");

16.2 the Investigating Committee committed an error of law in fundamentally misunderstanding its role, its powers and its obligations;

- 16.3 the dismissal of the complaint is irrational and unreasonable; and
- 16.4 the Investigating Committee failed to take into account relevant considerations.
- [17] The points raised by Mr Ramulifho in opposition in his rule 6(5)(d)(iii) notice are:

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- 17.1 because Mr Louw, who was the deponent to the affidavit making the complaint, is not a party to this application, none of the applicants have *locus standi*;
- 17.2 the complaint was defective because it was based on hearsay and conjecture;
- 17.3 there was no allegation that Mr Ramulifho committed acts of misconduct in his capacity as an attorney;
- 17.4 the falsified bank statements complained of were not statements of a trust account and therefore the LPC had no jurisdiction over them;
- 17.5 there was no allegation that the non-profit organisation that had allegedly been defrauded had "complained to the relevant authorities";
- 17.6 the LPC cannot be convinced to institute an investigation on inadmissible evidence and conjecture;
- 17.7 the allegations are based on a matter pending in the High Court and there is a criminal complaint, and therefore the LPC has to wait until the High Court matter and police investigation are finalised;
- 17.8 the decision of the LPC is not final as the complainants can still submit a proper complaint, and is therefore not reviewable;
- 17.9 the LPC cannot consider a defective complaint as that would be contrary to the rule of law;
- 17.10 it is not incorrect to say that the LPC did not investigate as it read the entire bundle; and
- 17.11 it is not for the LPC to make a case against an accused but the complainant.

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[18] A number of these points, specifically those summarised in 17.3–17.5, deal with the merits of the complaint, rather than the grounds of review. The merits of the complaint are not before me. I do, however, find it necessary to comment that it is mind-boggling that an attorney appears to take the position that he is entitled to act as the applicants allege he has acted and bear no professional consequence if there is no allegation that he acted in his professional capacity.

[19] As far as the points dealing with the merits are concerned, it is also necessary to say that the LPC has made no finding on those. It has declined to do so, because it took the position, as does the Mr Ramulifho, that it is the duty of the complainant to do so. This of course is the nub of the issue raised by the applicants.

[20] This leaves the question of *locus standi*, whether the High Court matter and the police investigation first had to be concluded (that appeared to be one of the reasons for dismissing the complaint), whether the decision of the LPC is final and therefore reviewable, and the questions of the validity of the complaint and the duty of the LPC to investigate, which include the points encapsulated in 17.2, 17.6 and 17.9–17.11 above.

[21] The basis of Mr Ramulifho's *locus standi* point is that Mr Louw was the deponent to the affidavit setting out the complaint to the LPC. If he is not an applicant then nobody else has *locus standi*. This is not the case. Mr Geffen and Mr Joseph were also complainants and have *locus standi*. There is no reason that co-complainants should be prevented from bringing a review application because another co-complainant does not elect to do so.

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[22] Mr Ramulifho submits that because Mr Geffen and Mr Joseph did not submit confirmatory affidavits together with Mr Louw's affidavits, they do not have *locus standi*. In my view, their submission of confirmatory affidavits in the complaint is irrelevant. They were named as complainants. They did in reply submit confirmatory affidavits, but in any event have confirmed on oath before this Court that they were complainants. They have indubitably established *locus standi*.

[23] GroundUp was not a complainant and does not have *locus standi* on the basis of being a complainant. It was submitted for the first applicant that it has *locus standi* in the public interest, and also that it being a party in the litigation which formed the basis for the complaint gave it *locus standi*. Neither of these grounds were pleaded.

[24] In any event there is no reason for me to consider these grounds because it is sufficient for the purposes of me dealing with this application that Mr Geffen and Mr Joseph have *locus standi*.

[25] The contention that the High Court interdict application has to be determined before the LPC can consider a complaint also holds no water. While it may be easier to make a finding if there is already a judgment finding that Mr Ramulifho's version relied on falsified documents, this does not prevent the LPC investigating. The matter before the High Court is not specifically on the merits of the complaint to the LPC, and therefore there is no obligation for the LPC to wait before it investigates, or on the complainants to wait before they complain.

[26] Mr Ramulifho is *dominus litus* in the application, and could delay the LPC investigation simply by failing to set the matter down if that was the case. Of course

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it is within the power of the other parties in that matter to set it down but there is no obligation on them.

[27] The existence of a criminal complaint is also irrelevant to the complaint to the LPC. It has different consequences and may well have different burdens of proof. The outcome of each may be considered in determining the other, but ultimately each has to follow its own process.

[28] Mr Ramulifho relies on the contention that the complainants are not barred from submitting a "proper" complaint to submit that the decision of the LPC was not final. This of course begs the question whether there was a "proper" complaint before the LPC in the first place. If there was, and the LPC was required to investigate, and did not, the LPC's decision was unlawful.

[29] The LPC has not asked for further evidence, information or but has instead stated that it regards the matter as finalised and it has closed its file. It advised the complainants not only that no internal appeal was available, but also that they could proceed to review the decision in the High Court.

[30] The dismissal of the complaint and the closing of the file are final, as is the investigation or failure to investigate by the LPC. There is no intimation that the process is ongoing. I am satisfied that the decision of the LPC is final, has external **legal** effect, and is reviewable.

[31] The questions raised by Mr Ramulifho regarding the validity of the complaint and the duty of the LPC to investigate essentially gainsay the grounds relied upon by the applicants for review. Their merit will depend on my consideration of those grounds and I deal with them in the course of considering the merits of the review.

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[32] The Preamble to the LPA states that the purpose of the Act includes regulating the **legal** profession in the public interest and ensuring the accountability of the **legal** profession to the public. In my view, this is relevant to how the role of the LPC in complaints against **legal** practitioners is interpreted.

[33] Section 37(1) requires the LPC to establish investigating committees "to conduct investigations of all complaints of misconduct against **legal** practitioners".

[34] Section 37(3) requires an investigating committee:

". . . after investigating a complaint, if it is satisfied that–

- (a) the **legal** practitioner, or the candidate **legal** practitioner concerned may, on the basis of available *prima facie* evidence, be guilty of misconduct that, in terms of the code of conduct, warrants misconduct proceedings, refer the matter to the **Council** for adjudication by a disciplinary committee; or
- (b) the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, as set out in the code of conduct, it must dismiss the complaint, inform the **Council**, the complainant and the **legal** practitioner, candidate **legal** practitioner or juristic entity of its finding and the reasons for it, whereafter the complainant may appeal in terms of section 41, if the complainant is aggrieved by–
 - (i) the manner in which the investigating committee conducted its investigation; or
 - (ii) the outcome of the investigating committee."

[35] It is clear that all complaints must be investigated. The investigating committee must then satisfy itself either

35.1 that the **legal** practitioner may be guilty of misconduct for which misconduct proceedings are warranted in terms of the Code of Conduct,

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on "the available *prima facie* evidence", in which case it refers the matter for adjudication by a disciplinary committee; or

35.2 that the conduct does not necessarily warrant misconduct proceedings, in which case the complaint must be dismissed.

[36] What is clear is that the first step is for the committee to conduct an investigation. The next step is for the committee to decide whether the "available *prima facie* evidence" may lead to a finding of misconduct which is the sort of misconduct that requires misconduct proceedings. If so, the matter must be referred to a disciplinary committee.

[37] Mr Ramulifho suggests that a reading of the complaint documents consists of investigation. It may be that in some cases reading the complaint and response is sufficient investigation. It is not necessarily the case, and it is not so in this case.

[38] This is because the response of the investigating committee shows that there was conduct complained of by a **legal** practitioner which the committee considered would constitute professional misconduct if they are true and if they were committed in a professional capacity.

[39] The committee then did not investigate any further. Instead it decided that the obligation to investigate ended at finding that the necessary evidence had not been provided by the complainant.

[40] The committee has extensive investigative powers, which are set out in rule 40 of the LPC Rules. It chose, incomprehensively, not to exercise them. It is required to

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do so. The committee is not a court which has to decide matters on pleadings and evidence placed before it by the parties. There is no *onus* on a complainant. A complainant simply has to bring conduct to the attention of the committee. Any other interpretation would be prejudicial to the public interest.

[41] The investigating committee does not function as a court. A complaint is not the same as motion proceedings, and a complainant does not bear any *onus*. The investigating committee has to investigate. It must follow up on the issues raised, obtain information and interview witnesses, if the matter requires it. On the basis of investigating committee's own response to this complaint, it was clear that this is a matter that required it.

[42] It is the disciplinary committee which must make the decision whether a case is made out, if the matter is referred to it, and whether the evidence is good enough to establish guilt of the **legal** practitioner.

[43] To expect a member of the public complaining about the conduct of a **legal** practitioner to bring a complete case would make a mockery of what the LPA seeks to achieve. The LPC is there to assist members of the public, rather than to protect **legal** practitioners by making it harder for members of the public to obtain redress. The approach taken by the LPC in this matter is fundamentally flawed and inconsistent with not only the literal meaning of the LPA, but also with its stated purpose.

[44] The use of the phrase "available *prima facie* evidence" shows that the committee does not have to decide whether a watertight case exists. It is not for the committee to evaluate the probity of the evidence. The committee has to evaluate only *prima*

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facie whether, if the evidence is found to be established, there would be a guilty finding. It has already made that finding, yet it dismissed the complaint.

[45] Further, the investigating committee had to be satisfied that misconduct proceedings were "not necessarily warranted". Taking into account the questions it raised, and the response of Mr Ramulifho it is clear that there was no basis on which the investigating committee could have been satisfied one way or the other without further investigation.

[46] The investigating committee also relied for the dismissal on a view that:

"... the allegations must first be tested by an authority other than the LPC or be supported by reasonable and credible verification and then the relevant finding or appropriate verification must be presented to the LPC for investigation of possible misconduct."

[47] This again is inconsistent with the LPA. It is true that the allegations did not have to be tested by the investigating committee. That is the function of a disciplinary committee, if the matter is referred to one. But to require that some other authority must first make a decision, or to require that a complainant make out a case that is already complete and ready to be adjudicated upon by a disciplinary committee, makes a mockery of the scheme established by the LPA, and in fact belies the reason for the existence of the investigating committee, before a matter goes to a disciplinary committee. It is for the investigating committee to investigate whether reasonable and credible verification may be obtained, and if so, to obtain it, rather than to sit back and say to a complainant that they have not done so.

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[48] By misconstruing its role, the investigating committee has committed an error of law.

[49] The decision was also not rationally connected to the information before it. Specifically, one of the reasons given was that Mr Ramulifho had "given a reasonable explanation of his conduct". Mr Ramulifho gave no explanation whatsoever of his conduct. His only response was to raise problems with the manner in which the complaint was presented. He did not deal with its substance at all. In my view, this also supports the conclusion that the decision was so unreasonable that no reasonable person could have taken it.

[50] It can be seen then that in this context, the points raised by Mr Ramulifho about the validity of the complaint and the role of the LPC can hold no water.

[51] For the reasons set out above, I am satisfied that the decision to dismiss the complaint is reviewable, and that the applicants have made out a case for the relief sought, which is to review and set aside the decision, and remit the matter to the LPC for proper investigation.

[52] I do not see any reason not to award costs occasioned by opposition to the application against Mr Ramulifho. Even if he had not opposed, the applicants would have had to bring an application for the relief they seek, so they are only entitled to costs occasioned by opposition. Had the applicants sought costs against the LPC respondents, it is entirely possible that they would have been awarded, as the application was necessitated by the LPC's conduct.

[53] I make the following order:

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- (a) the failure of the first respondent and/or the third respondent and/or the fourth respondent to investigate the second and third applicants' complaint against the fifth respondent, Mr Ramulifho (complaint number 5192/2020) ("the complaint"), is unlawful, invalid and unconstitutional;
- (b) the decision of the third respondent and/or the first respondent and/or the fourth respondent, dated 13 October 2020, to dismiss the complaint is unlawful, invalid and unconstitutional;
- (c) the decision of the third respondent and/or the first respondent and/or the fourth respondent, dated 13 October 2020, to dismiss the complaint is reviewed and set aside;
- (d) the matter is remitted to the first respondent and the first respondent is directed to:
 - a. convene an investigative committee, in terms of section 37(1) of the **Legal Practice** Act 28 of 2014, to investigate the complaint afresh; and
 - b. conduct a proper investigation into the complaint, in accordance with the requirements of the **Legal Practice** Act 28 of 2014, read with the **Legal Practice Council** Rules, 2018;
- (e) the third respondent, Mr Y Mayet, shall in no way be involved in the fresh investigation to be conducted; and
- (f) the costs of the application occasioned by the fifth respondent's opposition are to be paid by the fifth respondent, including the costs of two counsel where so employed.