IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA

Case Number: 20066/2016

and

Case Number: 61790/2012

(1) **REPORTABLE: YES / NO**

(2) **OF INTEREST TO OTHER JUDGES: YES / NO**

(3) **REVISED**

7.2.2017

DATE **SIGNATURE**

In the matter between:

RONALD BOBROFF	**First Applicant**
DARREN RODNEY BOBROFF	**Second Applicant**
and	
THE LAW SOCIETY OF THE NORTHERN PROVINCES	**First Respondent**
JENNIFER GRAHAM	**Second Respondent**
MATTHEW GRAHAM	**Third Respondent**
STEPHEN DEREK BEZUIDENHOUT	**Fourth Respondent**

In re:

Case Number: 20066/2016

THE LAW SOCIETY OF THE NORTHERN PROVINCES
Applicant

and

RONALD BOBROFF	**First Respondent**
DARREN RODNEY BOBROFF	**Second Respondent**

STEPHEN DEREK BEZUIDENHOUT	**Third Respondent**
RONALD BOBROFF AND PARTNERS INC.	**Fourth Respondent**
JENIFFER GRAHAM	**Fifth Respondent**
MATTHEW GRAHAM	**Sixth Respondent**

and

In re:

CASE NO. 61790/2012

THE LAW SOCIETY OF THE NORTHERN PROVINCES	**Applicant**

and

JENNIFER GRAHAM	**First applicant in the main application**
MATTHEW GRAHAM	**Second applicant in the main application**
ROAD ACCIDENT FUND	**Intervening third applicant in the main application**
RONALD BOBROFF AND PARTNERS INC.	**Second respondent in the main application**
RONALD BOBROFF	**Third Respondent in the main application**
DARREN RODNEY BOBROFF	**Fourth respondent in the main application**

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] On 6 December 2016 this court dismissed two applications brought by the applicants and indicated that reasons for the orders will follow. The reasons for the orders are herewith furnished.

Introduction

[2] The applicants are respondents in two separate applications, to wit an application launched by the Law Society of the Northern Provinces ("the Law Society") for the striking of their names from the roll of attorneys (20066/2016 - the "2016 application") and a counter application launched by Jennifer and Mathew Graham ("the Grahams") under case number 61790 / 2012 ("the 2012 application").

[3] Both matters were enrolled to be heard 6 December 2016.

[4] One day prior to the hearing of the applications, the applicants served two applications to be heard on 6 December 2016. In terms of the first application, the applicants claimed, *inter alia*, the following relief:

> *"1. condoning, if necessary, the Applicants' failure for not having launched and served this application prior to the eventual date upon which it is launched and served; and*
>
> *2. striking the matter under Case No.20066/2016 and the matter under Case No. 61790/2012 form the Roll on the 6th December 2016;*
>
> *3. **alternatively**, postponing the hearings of the matter under Case No. 20066/2016 and the matter under Case No. 61790/2012 pending the determination of an application by the Applicants in terms whereof the Applicants seek an order that the application by the First Respondent (under Case No. 20066/2016) has not been served on the Applicants in terms of the Uniform Rules of Court;*
>
> *4. **alternatively**, that the hearings of the matter under Case No. 20066/2016 and the matter under Case No. 61790/2012 be postponed to a date as determined by the above Honourable Court;"*

[5] In terms of the second application, the following relief is, *inter alia* claimed:

> *"1. directing that the First Respondent has failed to serve on the Applicants the application papers in terms of the Uniform Rules of Court, **alternatively**, in terms of the Practice Directives as contained in the Practice Manual of the above Honourable Court; and*
>
> *2. declaring that the application has not properly been enrolled for a hearing on the 6th December 2016 and that the orders of the Deputy Judge President of the above Honourable Court, Judge Ledwaba, and on the 24th August 2016 were not competent;"*

[6] The relief claimed in the first and second applications overlap in certain instances and for ease of reference the relief claimed will be dealt with under the followings headings:

i. Service;

ii. Striking / declaring that matter has not been properly enrolled; and

iii. Postponement.

Background

[7] The background leading to both applications are somewhat cumbersome and will only be referred to herein insofar as the facts pertain to the applications under consideration.

[8] The first applicant was admitted as an attorney of this court on 16 April 1973 and having practised for a period in excess of 40 years is, no doubt, a seasoned practitioner.

[9] The second applicant, the son of the first applicant, was admitted as an attorney on 29 August 2005 and joined his father in the firm known as Ronald Bobroff & Partners Inc. At the time of the hearing of this application, the second applicant was practising for at least 11 years.

[10] The applicants dealt mainly with claims against the Road Accident Fund (RAF) and were accordingly instructed by the Grahams to prosecute a claim against the RAF in respect of injuries sustained by Mr Graham in a motor vehicle collision.

[11] During 2011 the Grahams discovered that the applicants claimed inflated fees and as a result grossly overreached them. Consequently, the Grahams lodged a complaint with the Law Society in June 2011. The complaint contained detailed information regarding the alleged improprieties perpetrated by the applicants. The applicants were, therefore, aware from at least 2011 that the status of the firm's accounting records is under scrutiny.

[12] For reasons which are still unclear at this stage, the Law Society dragged its feet, which resulted in the Grahams launching the 2012 application claiming directory and declaratory relief. Exact details pertaining to the applicants' alleged misconduct were contained in the founding affidavit filed by the Grahams in the 2012 application some 4 years ago.

[13] Judgment was delivered in the 2012 application by Mothle J on 15 April 2014. Mothle J, *inter alia*, directed the Law Society to convene a disciplinary enquiry against the applicants and to conduct an inspection of the accounting records of the firm. It is common cause that various erstwhile clients of the applicants have obtained judgments against them based on illegalities that occurred during their handling of RAF claims on behalf of their clients. In the result, the applicants were acutely aware, prior to the launching of the 2016 application, that their accounting system was the subject matter of previous litigation.

[14] The Law Society could not adhere to the strict time lines laid down in the Mothle J order and brought the present 2012 application in order to seek an extension thereof. The Grahams were not satisfied with the conduct of the Law Society and launched the counter-application that forms the subject matter of one of the main applications herein.

Service: Facts

[15] During March 2016 and as a result of the improprieties discovered during its investigation into the affairs of the applicants' firm, the Law Society launched the 2016 application.

[16] I wish to reiterate that most, if not all, of the improprieties discovered by the Law Society emanates from the various complaints lodged and court cases brought by erstwhile clients of the applicants.

[17] On 11 March 2016 the Law Society emailed the notice of motion and founding affidavit in the 2016 application to Mr Zimmerman of Taitz & Skikne, who represented the applicants in the 2012 application. It appears that the annexures to the application were not attached to the email. Be that as it may, the applicants claim that Mr Zimmerman did not inform them of the application and they first became aware of the email when they received the notice of set down by way of edictal citation during October 2016.

[18] The following paragraphs of Mr Zimmerman's letter dated 8 September 2016, addressed to Mr Cameron, the applicants' present attorney of record, however, gainsay the applicants' allegations in this regard:

> *"6. Shortly before the ventilation of the Graham matter in March this year, the Law Society launched their own application to strike out Bobroffs and Bezuidenhout under case number 2006/2016* (sic) *out of the Pretoria High Court. The application was served informally on me via email, with a request that I accept service by email. I did not agree thereto and advised the Law Society verbally (and I think in writing) that I had no instructions to accept service by e-mail.*
>
> *7. I was also not instructed on the matter at all by the Bobroffs, and have no mandate to act in the matter. I am however aware that this matter is enrolled for the 6th December 2016 and it appears that you have now received a copy of the Law Society application from Rooth and Wessels. We are not in possession of such a copy and there has never been* ***formal*** *service on our offices of the application,* ***as the Bobroffs did not wish to instruct us to place ourselves on record for purpose of accepting service.***" (own emphasis)

[19] I pause to mention that the Bobroffs left for Australia before the 2016 application could be formally served on them. That they had notice of the application appears clearly from the contents of Mr Zimmerman's response *supra*. It is not clear from the papers why the Bobroffs, being fully aware of the 2016 application, did not wish to instruct Mr Zimmerman to act on their behalf. Be that as it may, Mr Zimmerman was, to the knowledge of the applicants, in

possession of an emailed copy of the application. The applicants were not only aware that Mr Zimmerman was in possession of a copy of the application, but instructed him not to accept delivery thereof on their behalf. Had the applicants acted prudently, the annexures could have been requested in March 2016 already.

[20] After service of the 2016 application by email, the 2012 application was heard by Makgoka J on 14 March 2016. During the hearing the applicants were represented by attorneys and by Advocate Cassim SC. One should bear in mind that this hearing was prior to the applicants leaving the country.

[21] Judgment was delivered on 26 April 2016. In the first applicant's founding papers he confirms that he was fully aware of the order issued by the court. He stated the following: *In Annexure FA 12* (the court order), *Darren and I were suspended from practising as attorneys and conveyancers and pending the determination of the LSNP Application (which was not before the Court- the Court apparently took judicial cognizance of its existence nonetheless).....*" The order makes it patently clear that the 2016 application was mentioned in court.

[22] Instead of requesting a copy of the application, the applicants decided to leave the country shortly thereafter. The applicants claim that they had received various threats which necessitated their immediate departure from the country. Even if they did receive threats, one would expect experienced attorneys to request a copy of the application, before they departed on the 17th and the 20th of March 2016. Their conduct points to only one conclusion, they intentionally avoided being formally served with the application.

[23] In direct contradiction to their professed ignorance of the fact that the 2016 application was emailed to Mr Zimmerman, the first applicant stated the following in his founding affidavit:

"Since May 2016, Darren and I have approached many attorneys (sole practitioners and attorneys in partnerships and incorporated companies) in order to prevail upon these persons to represent us in the LSNP Application and the Graham Counter Application – I am not at liberty to identify the names of these attorneys and in order not to embarrass them. These attorneys all refused to represent the Firm, Darren and myself on a number of grounds...."

[24] It is astounding that the applicants profess on the one hand that they had no knowledge of the application and that the application was not properly served on them, whilst on the other hand they had sought legal representation in the application as long ago as May 2016.

Service: Legal framework

[25] The applicants maintain that the 2016 application was not served on them in terms of rule 4 of the Uniform rules of court and as such the proceedings are null and void.

[26] Knowledge of legal proceedings is, no doubt, the corner stone of our legal system. [See, *inter alia, Steinburg v Cosmopolitan National Bank of Chicago* 1973 (3) SA 885 (RA) at 892 C]. To this end the legislator has formulated rule 4 of the Uniform rules of court, which makes service in terms of the rule compulsory.

[27] One should, however, bear in mind that the underlying principle pertaining to service is to ensure that a party receives notice of the legal proceedings that is to be instituted against such party.

[28] A court may, therefore, in appropriate circumstances condone *"irregular"* service i.e. service that is not in strict compliance with rule 4. [See: *Garrett v Lea Hobbs Milton & Co* 1979 (4) 922 W at 925 C and *Hessel's Cash & Carry v South African Commercial Catering and Allied Workers Union* 1992 (4) SA 593 E at 500 G – 600 A]

[29] The rationale behind the court's discretion to condone irregular service is apparent, it prevents parties from intentionally manoeuvring the legal process in order to gain an unfair advantage. In allowing a party to, through over technical objections, abuse the well-intended principle of knowledge of legal proceedings, will defeat the ends of justice and will countenance unscrupulous delaying tactics.

[30] The legal proceedings in the 2016 application were served via email on the attorney who represented the applicants in the 2012 application. Although the service was not in strict compliance with the provisions of rule 4, the applicants did not only have knowledge of the application, but upon receipt thereof by Mr Zimmerman, intentionally elected not to appoint him to represent them in the application.

[31] The applicants' departure to Australia shortly after Mr Zimmerman received the 2016 application, effectively prevented the Law Society from effecting service in terms of the provisions of rule 4. The applicants, being attorneys possessing specialised knowledge of the rules of court were, no doubt, acutely aware that their conduct resulted in the Law Society being incapable of serving the application in strict compliance with the provisions of rule 4.

[32] In my view, the conduct of the applicants was *mala fide* to the extreme. I am aware that the rules of court apply equally to any litigant. In an application of this nature, one can however, not ignore the fact that the applicants are officers of this court, who at all relevant times should act with the utmost good faith in matters affecting the very essence of their profession.

[33] The applicants utilised their knowledge of court procedure to effectively prevent the court from examining their alleged misconduct. In endorsing this kind of behaviour by officers of court would bring the legal profession in disrepute.

[34] In the premises, the court found that the applicants had due notice of the 2016 application and dismissed the declaratory relief claimed in respect thereof.

Striking / matter not properly enrolled

[35] Notwithstanding the fact that Mr Zimmerman attended a meeting convened by Deputy Judge President, Judge Ledwaba on 18 August 2016, on behalf of the applicants, at which meeting a direction was issued that both the 2012 and the 2016 applications be enrolled on the 6th December 2016, the applicants allege that the 2012 matter was not properly enrolled.

[36] Mr Zimmerman forwarded the directives issued by Judge Ledwaba to Mr Cameron, the applicants' present attorney of record. The relevant portion of the response by Mr Cameron, dated 8 September 2016 bears scrutiny:

"We refer to the First Application (2012 application) *and the Second Application* (2016 application) *and more specifically to the* ***notice of set down*** *dated 26th August 2016 which was served on Rontgen and Rontgen Inc. on the 26th August 2016, which notice you have transmitted to ourselves."* (own emphasis)

[37] The objection to the proper set-down of the 2012 application appears to emanate from the first directive issued by the offices of Judge Ledwaba. The directive inadvertently only referred to the 2016 application. Shortly thereafter a second directive was, however, issued which rectified the oversight.

[38] It is clear from Mr Cameron's letter *supra* that the applicants were well aware that both applications were set down for hearing on 6 December 2016. The first applicant, furthermore, attached a copy of the second directive to his founding affidavit, confirming the fact that the second directive did come to his notice.

[39] In the premises, this point has no substance and was dismissed.

[40] Having found that the matter was properly enrolled, it follows that the directives issued by the Deputy Judge President, Judge Ledwaba were competent and remained binding.

Postponement

[41] The principles applicable to a postponement were succinctly summarised by the Constitutional Court in *Lekolwane v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 CC at para [17] as follows:

> *"The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest. All these factors, to the extent appropriate, together with the prospects of success on the merits of the matter, will be weighed by the court to determine whether it is in the interests of justice to grant the application."* (Footnotes have been omitted.)

[42] The sole reason for the postponement of the 2016 application was to afford the applicants an opportunity to appoint a suitable forensic accountant to generate a report in response to the first and second reports prepared by the auditors appointed by the Law Society.

[43] Notwithstanding the fact that the applicants were acutely aware from at least 2011 that their firm's accounting system is the subject of serious scrutiny, they have to date not dealt with a single transaction relating to their alleged misconduct.

[44] The 2012 counter-application was served on the applicants on 24 April 2015. The founding affidavit, once again, contains detailed allegations of misappropriation of funds. The applicants' failure to deal with these allegations to date is inexplicable.

[45] I pause to mention, that the applicants had no apparent difficulty in appointing a forensic specialist accountant during the week of 14th November 2016. Significantly, the applicants, once again, fail to explain why an accountant was only appointed at this late stage and not at the outset of the litigation.

[46] In respect of the postponement of the 2012 application, the applicants stated in their founding papers that they require *"time to respond to the consolidated affidavit deposed to by George van Niekerk and filed on behalf of the Grahams prior to the previous hearing on 14 March 2016."*

[47] The Grahams, however, pointed out that the affidavit was already served on 29 January 2016, some 10 months prior to 6 December 2016. Consequently, the applicants had more than ample time to respond to the affidavit.

[48] The court has in various judgments concerning the applicants, expressed its dissatisfaction with the delaying tactics employed by the applicants.

[49] The following extracts are contained in the Grahams' answering affidavit in the postponement application:

> *"12.1 Judgment in the application for leave to appeal the judgment by Mothle J in the main application, dated 15 June 2014:*
>
> *"The Bobroff's application for leave to appeal is intended to delay an inspection of their books of accounts and for no other purpose. In my view the numerous grounds of the application for leave to appeal as stated in the application are contrived and based on a self-serving misinterpretation of paragraphs 3 and 5 of the court orders." (paragraph 23).*

12.2 *Judgment in the application for leave to appeal the judgment by Matojane J in the contempt of court application, dated 04 June 2015:*

"I am inclined to agree with the Grahams that the grounds of appeal are contrived and application for Leave to Appeal is intended for the sole purpose of delaying an inspection of the respondent's computer work"

"It would seem that it is a deliberate strategy which is employed by the Bobroff's to delay for as long as they can the investigation of their financial affairs in the face of serious allegations of impropriety that are being made against them."

12.3 *Judgment by Murphy J in the application in terms of Rule 30, dated 26 August 2015:*

" I agree with counsel for the Grahams on the probabilities this application was resorted to as a calculated decision by the respondents to delay the disciplinary and investigative process. Sight must not be lost of the prior litigation involving the respondents and the fact that they are officers of this court. As attorneys, they should be playing open cards with the court and the Law Society. It seems to me that the most prudent course for them at this point in time would be one of cooperation and transparency.:"(paragraph 47).

[50] In requesting a further postponement, the applicants are perpetuating the very conduct that this court has, on at least three previous occasions, found to be irreconcilable with their profession.

[51] The application for postponement is not made *bona fide*. It is evidently a further delaying tactic.

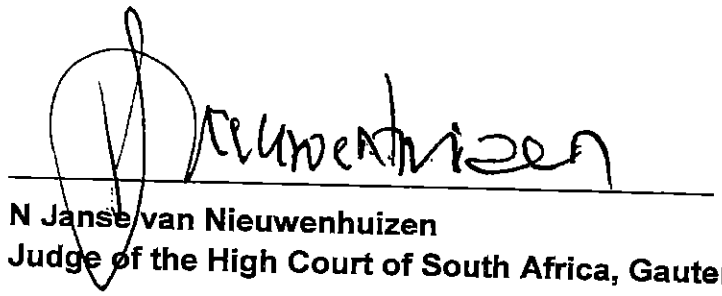
[52] The applicants, furthermore, knew from at least from 8 September 2016 that the 2012 and 2016 applications were set down for hearing on 6 December 2016.

[53] Notwithstanding the aforesaid, the application for postponement was only served on 5 December 2016, some 3 months later and one day prior to the hearing. Even if their explanation that they had difficulty in finding attorneys to represent them is accepted, one would at least have expected the applicants to immediately communicate with both the attorneys for the Grahams and the Law Society to explain their difficulties. The affidavit in support of their application does not contain any facts that were not known to them on 8 September 2016. As indicated earlier, both applicants are experienced officers of this court. There is no explanation in the papers for their failure to act without haste. In the premises, the application was not brought timeously and the reasons for the lateness have not been satisfactory explained. The application was in actual fact brought at the eleventh hour affording the other parties very little time to respond thereto.

[54] It is manifestly in the interests of the public to have attorneys, who abuse their position by misappropriating large sums of money due to their clients, struck from the roll. The history of the matter further strengthens the public interest in the outcome of the matter.

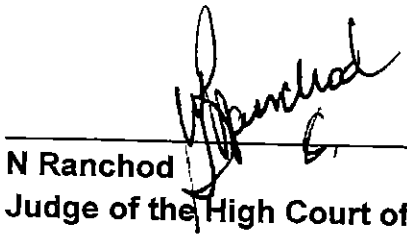
[55] Another factor that vitiates against the granting of a postponement is the applicants' absolute silence in respect of the prospects of success in opposing the applications.

[56] In the premises, the court did not deem it in the interest of justice to grant the applicants a postponement and for the reasons set out *supra*, the application was dismissed.



N Janse van Nieuwenhuizen
Judge of the High Court of South Africa, Gauteng Division

I agree.



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Judge of the High Court of South Africa, Gauteng Division

APPEARANCES

Counsel for the 1st and 2nd Applicant: Advocate Dirk Vetten

Instructed by: John Joseph Finlay Cameron

Counsel for the 1st Respondent: Advocate Henry Vorster

Instructed by: Rooth & Wessels Incorporation

Counsel for the 2nd & 3rd Respondent: Advocates Ian Green SC with Advocate Richard Moultrie.

Instructed by: Edward Nathan SonnenbergsWQE56

Counsel for the 4th Respondent: Advocate Max Du Plessis and Advocate Sarah Pudifin-Jones

Instructed by: Brugmans Incorporation