REPORTABLE

CASE NO: SA 43/2012

IN THE SUPREME COURT OF NAMIBIA

In the matter between

DISCIPLINARY COMMITTEE FOR LEGAL PRACTITIONERS **Appellant**

and

LUCIUS MURORUA **First respondent**

LAW SOCIETY OF NAMIBIA **Second respondent**

Coram: O'REGAN AJA, ZIYAMBI AJA and GARWE AJA

Heard: **16 October 2014**

Delivered: 20 November 2015

APPEAL JUDGMENT

O'REGAN AJA (ZIYAMBI AJA and GARWE AJA concurring):

[1] This appeal is brought by the Disciplinary Committee for Legal Practitioners (the Disciplinary Committee), established in terms of section 34 of the Legal Practitioners Act, 15 of 1995 (the Act). The Disciplinary Committee found the first respondent, a legal practitioner, guilty of unprofessional, dishonourable or unworthy conduct and a majority of the Disciplinary Committee considered that the

first respondent should be struck from the roll of legal practitioners. In terms of section 32 of the Act, the High Court of Namibia has the jurisdiction to strike legal practitioners from the roll and accordingly the matter was placed before the High Court. The relief sought was that the first respondent be struck from the roll of legal practitioners, and in the alternative, that he be suspended from practice for a period of two years, or such other period as the court considers appropriate.

[2] A full bench of the High Court found the first respondent to have been guilty of unprofessional, dishonourable or unworthy conduct but was divided on the issue of whether he should be struck from the roll of legal practitioners. By a majority, the court ordered that the first respondent be suspended from practice for a period of 12 months, but ordered that his suspension be suspended for three years on condition that he not be found guilty of unprofessional, dishonourable or unworthy conduct in terms of the Act within the period of three years. The minority judgment took the view that the first respondent should be struck from the roll. It is against the High Court judgment and order that the Disciplinary Committee now appeals.

Factual background

[3] The disciplinary charges at issue in this appeal arose in relation to first respondent's conduct as the legal representative of a plaintiff in divorce proceedings in 2002. First respondent arranged for the issue of summons. Once the defendant did not enter an appearance to defend within the stipulated time period, the first respondent, on behalf of the plaintiff, applied for and obtained an order of restitution. The defendant then obtained the services of a legal representative, Ms E Angula, and entered an appearance to defend. The

defendant also launched a rescission application in respect of the restitution order, in respect of which the first respondent, again on behalf of his client, lodged opposition. On the set-down date of the rescission application, the first respondent and Ms Angula discussed the matter. There is a dispute between them as to what they agreed. What is clear from the record is that the rescission application was postponed.

[4] Ms Angula was ill on the return day of the restitution application, which occurred some weeks later. Her understanding of the agreement she had reached with the first respondent was that the first respondent had undertaken to extend the return date of the restitution application pending the finalisation of the application to rescind the restitution order. She asked her secretary to call the first respondent to ask what had happened on the return date of the restitution application. It is common cause that the first respondent advised Ms Angula's secretary (Ms Viljoen) that the rule had been extended *sine die*. It is also common cause that this statement was untruthful. The return date of the restitution application had instead been extended by one week only. This the first respondent did not disclose to Ms Angula or her secretary.

[5] The explanation given by the first respondent for his false statement was the following:

> 'I was however resolved at that stage not to bring the wrath of my client onto me, hence I needed a dilatory ploy which would have enabled me to see off my client by securing a decree of divorce . . . I do not deny having told Ms Viljoen

> that the rule was extended *sine die* but state that I had to do it to honour the undertaking with my client.'

[6] A week later, the first respondent appeared in court on the return date of the restitution application and moved for and obtained a final decree of divorce on behalf of the plaintiff. It is common cause that he did not inform the court that a rescission application relating to the order of restitution was pending. Ms Angula, who had thought that the restitution application had been postponed *sine die*, did not become aware that the decree of divorce had been granted until nearly a week later while she was preparing her client's replying affidavit to the pending rescission application.

[7] Ms Angula sought an explanation from the first respondent, who, according to Ms Angula, feigned ignorance of the matter and stated that he was on study leave and had instructed counsel to appear on behalf of the plaintiff. According to Ms Angula, he told her that he was not aware that a decree of divorce had been granted. He said he would investigate and revert to her, although he did not do so. The first respondent explained this telephone call in which he made several untruthful statements as follows –

> 'The telephone conversation with Ms Angula was my unsuccessful attempt at damage control and there is nothing I can now do about that however I wish the situation could have turned out differently but that was not to be.'

[8] When the first respondent did not call her back, Ms Angula once again called the first respondent and he repeated, again untruthfully, that he was not

aware that the decree of divorce had been granted. His explanation of this telephone call is the following –

> 'I did not call back too bad, but I had lots of really important matters to attend to next to my studies hence I was not about to be sucked into a nasty office situation which I felt could wait till I return.'

[9] In February 2008, the first respondent was charged with three disciplinary offences by the appellant. Two of these are not relevant to these proceedings and need not be considered further. The third was a charge of unprofessional, dishonourable or unworthy conduct in contravention of the Act. The count, in relevant part, read as follows –

> '. . . in that during the period 22 July 2002 – 29 August 2002, . . ., he, contrary to an agreement with Ms Angula not to seek a final order pending an application to rescind the restitution order, secured a final decree of divorce and in doing so –
>
> (a) misled the court by –
>
> (i) failing to disclose the existence of the rescission application to the court;
>
> (ii) failing to disclose the agreement between him and Ms Angula to the court;
>
> (b) (i) lied to . . . Ms Angula's secretary;
>
> (ii) feigned ignorance as to what happened in court by telling Ms Angula that he was not aware that a final order had been granted, as he had instructed Adv Pickering, whilst in fact he personally appeared in court on the two occasions and personally obtained the final divorce order; and

> (iii) requested his secretary to perpetuate his lies to . . . Ms Angula.'

[10] The charge was thus based on two allegations of misconduct: misleading the court, and misleading a colleague. By agreement, the Disciplinary Committee determined the facts on the basis of the affidavits before it. No witnesses were called. On the papers, the first respondent denied that he had reached an agreement with Ms Angula that he would not proceed on the return day of the restitution proceedings, but would postpone the return date pending the finalisation of the rescission application launched by the defendant. This conflict of fact need not be determined in this appeal and need not be considered further.

[11] In March 2009, the Disciplinary Committee found that the first respondent was guilty both of misleading the court and misleading a colleague. The Committee was divided on what the appropriate sanction should be: a majority were of the view that the first respondent should be struck from the roll of legal practitioners while a minority considered that the first respondent should be suspended from practice for a period of two years. In July 2008, the appellant launched this application in the High Court. Judgment was delivered by the High Court on 29 June 2012.

Proceedings in High Court

[12] As mentioned above, by a majority, the court ordered that the first respondent be suspended from practice for a period of 12 months, but ordered

that his suspension be suspended for three years while the minority held that the first respondent should be struck from the roll.

[13] The majority found that there was a duty on the first respondent to inform the court of all material matters within his knowledge; that he failed in his duty in order to promote the interests of his client; that he failed to honour his undertaking to Ms Angula that he would not proceed to apply for a final order; that he went to 'unconscionable lengths' to give false information to Ms Angula and he 'suborned' his own secretary to repeat the falsehoods.

[14] However, the majority formed the view that first respondent's failure to inform the court of the pending rescission application did not constitute 'wilful misleading' of the court, but a failure to inform the court of a material matter, something the majority considered to be 'a far cry' from wilfully misleading the court.

[15] In determining the appropriate sanction, the majority took into account an earlier decision of the High Court, *Disciplinary Committee for Legal Practitioners v BJ Viljoen.*[1] In that case, the legal practitioners had backdated a letter to the Motor Vehicle Accident Fund concerning an alleged agreement not to hold his client bound to a prescription period. The contents of the letter were untrue, but the legal practitioner did not admit this to his client until the civil trial commenced. The Disciplinary Committee suspended the legal practitioner for twelve months, a decision that was endorsed by the High Court.

[1] A170/2008. An order of suspension was made by the High Court but no written judgment was delivered.

[16] After considering *Viljoen's* case, the majority concluded that although the conduct of first respondent 'comes dangerously close' to justifying his being struck from the Roll, instead imposed a suspension for twelve months, wholly suspended for three years.

[17] Appellant lodged a notice purporting to appeal against the decision of the High Court on 30 July 2012. Rule 5(1) of the Rules of this court provides that a notice of appeal must be lodged within 21 days of the pronouncement of the judgment and if the notice of appeal had been duly authorised by the appellant, the notice would have been timely. However, as will be set out more fully below, a valid decision to appeal the decision was not taken by the appellant until nearly eleven months after the judgment was handed down. Appellant has sought condonation for its failure to comply with the rules, a matter to which I return in a moment.

Appellant's arguments

[18] First, appellant argues that its application for condonation for late noting of the appeal should be granted.

[19] Second, appellant argues that the majority in the High Court erred in concluding that the first respondent did not wilfully mislead the court, but finding instead that he had merely failed to place material before the court. Appellant argues that the conduct of first respondent was premeditated, and involved not only misleading the court but also misleading a legal practitioner and her

secretary. On this basis, appellant argues, the majority of the High Court erred and its decision should be overturned on this basis.

[20] Thirdly, appellant argues that the majority in the High Court erred in the exercise of its discretion in determining the appropriate sanction to be imposed upon the first respondent. In this regard, appellant argued that 'it is settled law' that a legal practitioner who has acted dishonestly will ordinarily be struck from the Roll and submitted that there were no exceptional circumstances in this case which would suggest otherwise. Appellant argues that the High Court should not have considered itself bound by the approach in *Viljoen*'s case. Appellant argues that the conduct of the first respondent 'fell far short' of the standard required of legal practitioners, and his subsequent defence of his conduct illustrates that he does not appreciate the ethical duties owed by a legal practitioner to the court and to his or her colleagues.

First respondent's submissions

[21] First respondent opposes appellant's application for condonation and argues that the appellant has not provided an adequate explanation for its non-compliance.

[22] Secondly, first respondent argues that the proper approach of a court to the exercise of its discretion to discipline a legal practitioner should be the same as

that articulated by the South African Supreme Court of Appeal in *Malan and Another v Law Society, Northern Province*[2] where the court held that –

> 'the enquiry before a court that is called upon to exercise its disciplinary powers is not what constitutes an appropriate punishment for a past transgression but rather what is required for the protection of the public in future.'

[23] First respondent argues that the High Court had found that the sanction of suspension would provide a sufficient correction, and that the first respondent was unlikely to err again in future. First respondent thus disagreed with the appellant's argument that the general principle should be that where a legal practitioner is found to have acted dishonestly, the ordinary rule should be that the legal practitioner will be struck off unless exceptional circumstances are shown to exist.

[24] First respondent also points to the text of section 32(1*)(b)* of the Act which states that the High Court must decide if a legal practitioner –

> '. . . is guilty of unprofessional or dishonourable or unworthy conduct of a nature or under such circumstances which, in the opinion of the court, show that he or she is not a fit and proper person to continue to be a legal practitioner.'

[25] First respondent argues that the discretion lies with the High Court and that accordingly on appeal a court may not interfere with the decision simply because it would have reached a different decision, but only where it is shown that the High Court misdirected itself in the manner in which it approached the case.

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[2] 2009 (1) SA 216 (SCA) paras 4 – 8. This approach was cited with approval by Nugent JA for a majority of the Supreme Court of Appeal in *General Council of the Bar of South Africa v Geach & others* 2013 (2) SA 52 (SCA) para 67.

[26] First respondent defends the approach taken by the High Court. In particular, counsel argued that the court was correct in taking into account the circumstances of *Viljoen's* case [3] in reaching its decision. Accordingly first respondent submits that the appeal should be dismissed with costs.

Relevant legal provisions

[27] The Disciplinary Committee is established in terms of s 34 of the Act. Material for the purposes of this judgment are subsections 34(1) and (3) which provide –

> '(1) For the purpose of exercising disciplinary control over legal practitioners and candidate legal practitioners in accordance with the provisions of this Act, there shall be a committee to be called the Disciplinary Committee, which shall consist of –
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> (a) four legal practitioners appointed by the Council;[4] and
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> (b) one person appointed by the Minister,[5] who shall act as secretary of the Disciplinary Committee.
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> (3) A member of the Disciplinary Committee shall hold office for a period of two years from the date of his or her appointment and shall be eligible for reappointment.'

Applications for condonation

[3] See footnote 1 above.
[4] The Council is defined in s 1 of the Act as the Council of the Law Society.
[5] The Minister is defined in s 1 of the Act as the Minister of Justice.

[28] There are two applications for condonation brought by the appellant that must be considered. The first relates to the late noting of the appeal and the second to the appellant's late filing of its heads of argument.

Late filing of notice of appeal

[29] As mentioned above, the High Court judgment was delivered on 29 June 2012 and in terms of Rule 5(1) of the Rules of this court, an appeal should have been noted by 30 July 2012. On that date, a notice of appeal was lodged but as the appellant points out in its affidavit in support of its application for condonation, the decision purportedly authorising this notice of appeal was of doubtful validity for several reasons. First, the decision to lodge an appeal was taken by the Disciplinary Committee by way of round robin on 27 July 2012, but the Disciplinary Committee suggests that it may be that a decision to note an appeal may not be taken by round robin in terms of the Disciplinary Committee's procedures. Secondly, at the time that the decision was taken, the terms of office of two of the members of the Disciplinary Committee who participated in the decision had expired.[6] It is trite that a public authority must be validly constituted in order for it validly to exercise its powers,[7] so there can be little doubt that counsel for the appellant was correct in suggesting that the authority for the decision to lodge the appeal was invalid.

[30] Once the Disciplinary Committee realised that the decision to note an appeal was flawed because it had been taken by way of round robin, members of

[6] In terms of s 34(3) of the Act.
[7] See, for a discussion Hoexter *Administrative Law in South Africa* 2ed (Juta: 2012) at 256–257 and cases there cited.

the Disciplinary Committee sought to ratify the decision at a meeting held on 16 August 2012. Yet, as appellant's counsel points out, the ratification decision itself was also 'probably a nullity' because the same two members of the Disciplinary Committee whose terms of office had expired took part in the ratification decision.

[31] Thereafter, two months later, during October 2012, the Disciplinary Committee took legal advice on the status of its appeal. It was advised at the end of October 2012, that its decisions to lodge the appeal were null and void. Shortly afterwards, on 6 November 2012, four new members were appointed to the Disciplinary Committee. However, the Secretary of the Disciplinary Committee was not appointed until January 2013 and the matter was not reconsidered until 12 February 2013.

[32] On that date, the newly constituted Disciplinary Committee purported to ratify the earlier decision to note the appeal. Thereafter, the Disciplinary Committee once again obtained legal advice on the status of its appeal, and was once again advised, correctly, towards the end of March 2013, that the Disciplinary Committee could not ratify an invalid decision of the Council. After a further two months of discussion and disagreement, a fresh resolution was taken to pursue the appeal and to lodge an application for condonation on 24 May 2013. A fresh notice of appeal, as well as an application for condonation for the late noting of the appeal and the reinstatement of the appeal were then lodged more than two months later again on 29 July 2013, more than thirteen months after the judgment had been delivered.

[33] First respondent opposes appellant's application for condonation. He observes that the Disciplinary Committee is an administrative organ entrusted with upholding the standards of the legal profession and that it accordingly carries a particular burden to comply with the rules of the court. He points to the eleven-month delay between the delivery of the High Court judgment and the date upon which the Disciplinary Committee finally took a valid decision to note the appeal as well as the further two-month delay in lodging an application for condonation. First respondent argues that the appellant demonstrated no sense of urgency in seeking to rectify its errors.

[34] First respondent is correct in pointing to the woeful shortcomings in the conduct of the Disciplinary Committee in noting this appeal. First respondent is also correct to point out the importance of the statutory responsibility imposed upon the Disciplinary Committee to act in the public interest to uphold the standards of the legal profession. And again, the first respondent is correct in observing that the explanation provided in support of the application for condonation lacks cogency, although it is clear that at least in relation to the period between November 2012 and January 2013, when the Minister had not appointed a Secretary to the Committee,[8] the difficulties experienced by the Disciplinary Committee were not all of its own making.

[8] In this regard, it should be noted that the Council of the Law Society appoints the four legal practitioners who are members of the Disciplinary Committee, and the Minister of Justice appoints the fifth member of the Disciplinary Committee who serves as its Secretary. See s 34(1) of the Act.

[35] An application for condonation is not a mere formality.[9] A litigant seeking condonation bears the onus of satisfying the court that there is sufficient cause to warrant the grant of condonation.[10] The application must be launched without delay[11] and a detailed explanation must be provided for the failure to comply with the rules of court.[12] Where condonation is sought for delay, the explanation must cover the entire period of the delay.[13] In considering an application for condonation, a court will take into account the degree of non-compliance with the rules, the explanation for the non-compliance, the importance of the case, the interests of respondents in finality, the convenience of the court and the avoidance of unnecessary delay in the administration of justice.[14] Although prospects of success are ordinarily a relevant consideration in the determination of an application for condonation, where there has been flagrant non-compliance with the rules, the court is not obliged to consider prospects of success.[15]

[36] The explanation provided by the Disciplinary Committee demonstrates a lack of diligence, care and application by the members of the Disciplinary Committee. It is correct that the members of the Committee are acting *pro bono* in the public interest, as appellant argued, but that is no excuse for the slipshod performance of the duties of the Committee. On the contrary, public duties of this

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[9] See, for example, *Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia* 2014 (1) NR 166 (SC) para 6; *Beukes & another v SWABOU & others* 2011 (2) NR 609 (LC) para 12.
[10] See, for example, *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) para 9.
[11] See *Beukes*, cited above n 9, para 12.
[12] See *Shilongo,* cited above n 9, para 7.
[13] See *Shilongo,* cited above n 9, para 7; *Namib Plains Farming & Tourism CC v Valencia Uranium (Pty) Ltd & others* 2011 (2) NR 469 (SC) para 24.
[14] See, for example, the recent decision of the South African Supreme Court of Appeal, *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd & others* 2012 (2) All SA 251 (SCA) para 11.
[15] See *Shilongo*, cited above n 4, para 12; *Beukes,* cited above n 9, para 20; and *Petrus,* cited above n 10, para 10.

sort should be performed conscientiously and meticulously. Four of the five members of the Committee must, by statutory requirement, be legal practitioners.[16] Legal practitioners should be aware of the legal rules and principles that govern their service on a statutory body. They should know that their terms of office are limited in duration, and of the fact that once their terms have expired, they are no longer able to exercise the power of members of the Disciplinary Committee. Legal practitioners should also be punctilious in ensuring that appeals are prosecuted promptly and in accordance with the rules. Where doubts arise as to what is required, they should obtain competent legal advice promptly. In this case, the members of the Disciplinary Committee failed to act in the manner one would expect of legal practitioners carrying out an important mandate in the public interest.

[37] Moreover, there are material gaps in the explanation provided by the appellant, both in the period between July and November 2012, and in the period after the new Disciplinary Committee was properly constituted in January 2013. In relation to the first period, it should be noted that no affidavit was furnished by any person who had personal knowledge of the events between the date when judgment was delivered in June 2012 and the date when the Committee was reconstituted in November 2012. The founding affidavit in the condonation application was deposed to by Mr Barnard, a member of the Disciplinary Committee appointed in November 2012. No confirming affidavits from other members of the Committee were furnished. The deponent of the affidavit acknowledges that he had no personal knowledge of the events prior to his

[16] See section 34(1*)(a)* of the Legal Practitioners Act 15 of 1995.

appointment as a member of the Disciplinary Committee in November 2012 and states that his explanation is based on documents in the possession of the Committee that relate to that period.

[38] The explanation provided by Mr Barnard in relation to the four-month period between July and November is, not surprisingly, given his lack of personal knowledge of the events, scant and unpersuasive. No explanation is provided for the delay in obtaining legal advice between August and October 2012, nor is there any explanation as to why members whose terms of office had expired considered that they were nevertheless able to participate in decisions of the Disciplinary Committee. The absence of any detailed explanation to account for the delays and errors in this period is a fundamental weakness in the appellant's case for condonation. But the problems do not end there.

[39] Even once the new Disciplinary Committee was properly constituted in January 2012, a further four months elapsed before a valid decision to note the appeal was taken, and yet another two months before the notice of appeal and application for condonation for late filing of the appeal was filed. Two reasons are given for this delay. The first was that the Disciplinary Committee first erroneously sought to ratify the invalid decision of the early Committee to lodge an appeal, but was subsequently advised that the ratification was not valid. The second relates to a difference of opinion that arose between the members of the Disciplinary Committee and their legal representatives at a meeting on 8 April 2013. That difference of opinion appears to have been resolved when a legal opinion was obtained on 29 April 2013. Again, however, the Disciplinary Committee did not

attend to the matter till 24 May 2013 when again it resolved to note an appeal against the High Court judgment. Thereafter, however more than two months elapsed before the notice of appeal was finally lodged, together with the application for condonation of late filing of the appeal. The reference to a difference of legal opinion thus only explains a three-week period in April, not the four-month period that elapsed before a decision to lodge an appeal was finally taken.

[40] Accordingly, not only does the explanation demonstrate a worrying absence of attention to the rules and principles that regulate the Disciplinary Committee by members of the Committee, but a flagrant lack of urgency in the manner in which the Disciplinary Committee sought to rectify matters in the period between January 2013 and July 2013, at a time when it should have been painfully aware that it was in substantial non-compliance with the rules.

[41] The appellant has therefore not provided an adequate explanation for the substantial delay in noting the appeal. It is clear that the application is a matter of importance to the Disciplinary Committee, but in this regard too, it cannot be overlooked that the misconduct at issue took place in 2002, and that the first respondent has been practising as a legal practitioner since that time. The respondent had a material interest in the matter reaching finality, which was adversely affected by the delay.

[42] Ordinarily, prospects of success are a relevant consideration in determining an application for condonation, but where a court is of the view that non-

compliance with the rules has been flagrant, it will sometimes dispense with a consideration of the prospects of success. This is such a case. A validly authorised notice of appeal here was not lodged for more than a year after the High Court judgment had been handed down. Although the appellant has lodged an application for condonation setting out its explanation for that extraordinary delay, the explanation provided is not cogent nor has any explanation been furnished by a person who has personal knowledge of the events between June and November 2012. Nor was any reason given for that failure. Indeed, there is no evidence on the record before this court that the Disciplinary Committee, composed in the main of legal representatives, evinced any serious intent, or made any clear effort, to take steps to expedite the process of noting the appeal. Nor is there any explanation given for this lack of urgency or concern. Given the statutory mandate of the Disciplinary Committee, together with the fact that the majority of the members of the Committee are legal practitioners, these failures are inexcusable, and constitute a flagrant non-compliance with the rules of this court.

[43] In reaching this conclusion, I have taken into account a further consideration, the public interest in the administration of justice. It is important to note that the mandate of the Disciplinary Committee is to ensure that legal practitioners act with integrity in carrying out their professional tasks and to discipline those that fail to meet this high standard. This is an important mandate, central to the administration of justice in Namibia. The appellant argued that that consideration should outweigh the weak and unconvincing basis upon which it seeks condonation. Although it may be that considerations of the public interest

are important in this regard, were we to overlook the non-compliance by the appellant with the rules of court in this case, it might encourage future material non-compliance with the rules of this court, which would be harmful to the administration of justice in the long term. A further consideration relevant to the public interest is the fact that the misconduct at issue occurred more than twelve years before argument on the appeal was heard by this court. During that extended period, the first respondent has continued to practise as a legal practitioner under the order that was made by the High Court. We do not have an explanation on the record as to what occasioned the delays between 2002, when the misconduct occurred, and 2008 when the Disciplinary Committee heard the case against the first respondent so it is not possible to allocate responsibility for that delay. Nevertheless, in our view, the extensive delay in prosecuting this matter to finality does not strengthen the appellant's case that it is of such great importance in the public interest that the matter be heard, that the appellant's flagrant non-compliance with the rules of court should be overlooked.

Conclusion

[44] For the reasons set out above, the application for condonation for the late filing of the notice of appeal is refused and the appeal is struck from the roll. In the light of the decision that the appeal is to be struck from the roll, the appellant's application for condonation for late filing of its heads of argument must also be dismissed.

[45] One final issue should be mentioned before concluding this judgment. It is this. We have not considered the prospects of success in this case. However, we

consider it appropriate to observe that legal practitioners have a special ethical responsibility to behave honestly. They may not put the interests of their clients above this duty. As Dean Anthony Kronman formulated it, 'the law is a public calling which entails a duty to serve the good of the community as a whole, and not just one's own good or that of one's clients'.[17] It is a key responsibility of legal practitioners that they seek to uphold the integrity of the legal system and the fairness of its procedures, which is one of the reasons that legal practitioners are called 'officers of the court'. Courts have recognised these ethical obligations imposed upon legal practitioners.[18] Legal practitioners must be truthful in their dealings with their clients, with their colleagues and with courts. Where legal practitioners do not act honestly, they will be guilty of unprofessional and dishonourable conduct that is unworthy of a legal practitioner and will risk being struck off the roll of legal practitioners. Nothing in this judgment should be construed to suggest otherwise.

Costs

[46] The appeal is to be struck from the roll. There is no reason why the appellant should not be ordered to pay the costs of the first respondent, which should include all the costs of the appeal. The first respondent was represented

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[17] Anthony T Kronman 'The Law as a Profession' in Deborah L Rhode *Ethics in Practice: Lawyers' rules, responsibilities and regulations* (Oxford University Press, 2000) at 31.

[18] There seem to have been very few applications for striking off in Namibia. Only one was drawn to our attention, the *Viljoen* matter referred to in the judgment of the High Court. No reasons were given for that decision. There is accordingly a dearth of jurisprudence on the question in Namibia at present. On the other hand, there have been many such applications in South Africa where the legislative framework, as mentioned above, is very similar. See, for example, *S v Baleka & others (4)* 1988 (4) SA 688 (T); *Pienaar v Pienaar & andere* 2000 (1) SA 231 (O) at 23; *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA); *Malan & another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA); *Botha v Law Society, Northern Provinces* 2009 (3) SA 329 (SCA); and *General Council of the Bar of South Africa v Geach & others* 2013 (2) SA 52 (SCA).

by one instructing counsel and two instructed counsel, and the costs award will therefore be made on that basis.

Order

[47] The following order is made:

1. The application for condonation for the late filing of the appeal is dismissed.

2. The application for condonation for the late filing of the appellant's heads of argument is dismissed.

3. The appeal is struck from the roll.

4. Appellant is ordered to pay the costs of the first respondent on appeal, such costs to include the costs of one instructing and two instructed counsel.

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O'REGAN AJA

ZIYAMBI AJA

GARWE AJA

APPEARANCES

APPELLANT:	Mr A W Corbett (assisted by Mr R Maasdorp)
	Instructed by Etzold-Duvenhage
FIRST RESPONDENT:	Mr V Maleka, SC (assisted by Mr T C Phatela)
	Instructed by Murorua & Associates