



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 03 March 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

***Gaone Jack Siamisang Montshiwa (Ex Parte Application) [2023] ZASCA 19 (3 March 2023)***

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Today, the Supreme Court of Appeal (SCA) dismissed an application for leave to appeal from the North West Division of the High Court, Mahikeng (high court). The applicant was a candidate attorney who sought to be admitted as an attorney. However, the high court found that the applicant had failed to explain certain discrepancies regarding the dates on which his contract of articles of clerkship were concluded. The court was also not satisfied that the applicant had met the requirements related to a structured work course during the time in question. Ultimately, the court found that the applicant was not a fit and proper person to be admitted as a legal practitioner and dismissed the applicant's application for admission.

The applicant approached the high court for leave to appeal, which was similarly dismissed after a single judge considered the application. Lastly, the applicant petitioned this Court. This Court directed the Legal Practice Counsel (LPC) to make representations on the merits of the application. However, the LPC indicated that, considering the circumstances, the application was improperly brought before this Court as the court that considered the appeal only consisted of one judge, thereby rendering the dismissal of the appeal a nullity. The argument followed that this court, accordingly, had no jurisdiction to entertain the appeal.

However, the SCA found that it was warranted to exercise its inherent powers under s 173 of the Constitution of the Republic by considering the merits of the application for leave to appeal and, if appropriate, determine the appeal. The Court was of the view that if the matter was remitted to the high court, it would, in all probability, end up before this Court again. This would have amounted to an absurdity and would serve to only waste the Court and the applicant's resources.

Furthermore, upon consideration of the merits, the SCA determined that the applicant failed to make out a proper case for an order granting leave to appeal. Despite the vitriolic attacks against numerous members of the judiciary throughout the country, the applicant maintained that his conduct was not inappropriate. It was found that the applicant was not a fit and proper candidate for the legal profession;

his conduct exhibited throughout the application procedure was found to have fallen short of the integrity, dignity, honesty and respect expected from an officer of the court.

In the result, the SCA confirmed the order of the high court and dismissed the application for leave to appeal.

In a separate dissent, the minority held that the proceedings in the application for leave to appeal was irregular and the consequent order a nullity. As such, the matter ought to have been struck from the role.

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