IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case no: 7940/2024P

In the matter between:

PHILANI GODFREY MAVUNDLA	**APPLICANT**

and

THE MEC: DEPARTMENT OF CO-OPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS KWAZULU-NATAL	**FIRST RESPONDENT**
INDEPENDENT ELECTORAL COMMISSION	**SECOND RESPONDENT**
UMVOTI LOCAL MUNICIPALITY	**THIRD RESPONDENT**
THE ACTING MUNICIPAL MANAGER	**FOURTH RESPONDENT**

ORDER

The following order is granted:

1. The applicant's application for leave to appeal is dismissed with costs, such costs to be on scale C.
2. The costs incurred in respect of the additional appearances on 22 and 25 September 2024 are to be paid by Surendra Singh and Associates, on scale A.

3. The registrar is requested to send a copy of this judgement to the Legal Practice Council (KwaZulu-Natal Provincial Office) for its attention and further action.

JUDGMENT

E Bezuidenhout J

[1] The applicant applied for leave to appeal against the findings of fact and/or rulings of law arrived at in my judgment delivered on 16 August 2024, which contained the reasons for an order I made on 19 June 2024.[1] The applicant filed a notice of leave to appeal ('notice of appeal') a few days after the order was granted, containing various grounds of appeal, even though I had not yet provided the reasons for my order. A supplementary notice of application for leave to appeal ('supplementary notice of appeal') was filed on 6 September 2024, which contained, in addition to the grounds of appeal, rather unusually, several references to case authorities in support of submissions made in respect of the grounds of appeal. The first respondent, the MEC for the Department of Co-Operative Government and Traditional Affairs, KwaZulu-Natal, opposed the application for leave to appeal.

[2] The facts of the matter are set out in detail in my judgment and will not be repeated herein,[2] suffice to say that following an application by the first respondent for the reconsideration of an order and a rule *nisi* containing interdictory relief granted in the applicant's favour on 20 May 2024, I discharged the rule and rescinded the order.

[3] The grounds of appeal are set out in detail in the notice of appeal and the supplementary notice for leave to appeal. I have taken note of all the points raised and carefully considered each one. I initially intended to only highlight a few of the issues raised during argument. It has however become necessary to deal with the

[1] The reasons are cited as follows: *Mavundla v MEC: Department of Corporative Government and Traditional Affairs Kwazulu-Natal and others* [2024] ZAKZPHC 66 (*Mavundla*).
[2] See *Mavundla* para 5 onwards.

supplementary notice of appeal and the submissions made before me in much more detail, due to certain concerning issues that came to light after the matter was initially argued before me.

[4] Before I deal with the merits of the application, it is perhaps appropriate to say something about the test to be applied in applications of this nature. In terms of section 17(1)*(a)*(i) of the Superior Courts Act 10 of 2013, leave to appeal may only be given where the judge is of the opinion that 'the appeal would have a reasonable prospect of success', or in terms of section 17(1)*(a)*(ii), if there is 'some other compelling reason why the appeal should be heard'.

[5] In *The Mont Chevaux Trust v Goosen and others,*[3] Bertelsmann J (in an *obiter dictum*) held that:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

[6] The test was also considered in *S v Smith*[4] where the court held:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.' (Footnotes omitted.)

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[3] *The Mont Chevaux Trust v Goosen* [2014] ZALCC 20, 2014 JDR 2325 (LCC) para 6.
[4] *S v Smith* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) (*Smith*) para 7.

[7] In *Four Wheel Drive v Rattan NO*,[5] Schippers JA, with reference to *Smith,* referred to the principle that leave to appeal should only be granted where 'a sound, rational basis [exists] for the conclusion that there are prospects of success on appeal'. Put differently, the court is required to test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles. In *Four Wheel Drive* the court *a quo* was also criticised for granting leave to appeal when there were no reasonable prospects of success, which resulted in the parties being put through the inconvenience and expense of an appeal without any merit.

[8] It is perhaps also appropriate at this stage to deal with an appeal court's approach when dealing with a discretion exercised by the court *a quo*. As set out in my judgment at paras 37 and 52, I was called upon to exercise a discretion in respect of the reconsideration application. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa*[6] the court held as follows:

'[83] In order to decipher the standard of interference that an appellate court is justified in applying, a distinction between two types of discretion emerged in our case law. That distinction is now deeply-rooted in the law governing the relationship between appeal courts and courts of first instance. Therefore, the proper approach on appeal is for an appellate court to ascertain whether the discretion exercised by the lower court was a discretion in the true sense or whether it was a discretion in the loose sense. The importance of the distinction is that either type of discretion will dictate the standard of interference that an appellate court must apply.

[84] In *Media Workers Association*, the Court defined a discretion in the true sense:

> "The essence of a discretion in [the true] sense is that, if the repository of the power follows any one of the available courses, he would be acting within his powers, and his exercise of power could not be set aside merely because a Court would have preferred him to have followed a different course among those available to him."

[85] A discretion in the true sense is found where the lower court has a wide range of equally permissible options available to it. This type of discretion has been found by this Court in many instances, including matters of costs, damages and in the award of a remedy in terms of section 35 of the Restitution of Land Rights Act. It is "true" in that the lower court has an election of

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[5] *Four Wheel Drive Accessory Distributors CC v Rattan NO* [2018] ZASCA 124; 2019 (3) SA 451 (SCA) para 34. See also *Independent Examinations Board v Umalusi and others* [2021] ZAGPPHC 12 paras 2-4.

[6] *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC).

which option it will apply and any option can never be said to be wrong as each is entirely permissible.

[86] In contrast, where a court has a discretion in the loose sense, it does not necessarily have a choice between equally permissible options. Instead, as described in *Knox*, a discretion in the loose sense—

> "means no more than that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision."

[87] This Court has, on many occasions, accepted and applied the principles enunciated in *Knox* and *Media Workers Association*. An appellate court must heed the standard of interference applicable to either of the discretions. In the instance of a discretion in the loose sense, an appellate court is equally capable of determining the matter in the same manner as the court of first instance and can therefore substitute its own exercise of the discretion without first having to find that the court of first instance did not act judicially. However, even where a discretion in the loose sense is conferred on a lower court, an appellate court's power to interfere may be curtailed by broader policy considerations. Therefore, whenever an appellate court interferes with a discretion in the loose sense, it must be guarded.

[88] When a lower court exercises a discretion in the true sense, it would ordinarily be inappropriate for an appellate court to interfere unless it is satisfied that this discretion was not exercised—

> "judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles." (Footnote omitted.)

An appellate court ought to be slow to substitute its own decision solely because it does not agree with the permissible option chosen by the lower court.' (Footnotes omitted.)

[9] In returning to the present application, counsel for the applicant, Ms S Pillay (employed by the applicant's attorney of record, Surendra Singh and Associates), referred to my finding on the issue of joinder, where I had held that the applicant had failed to join the councillors of the municipal council, the majority of whom had requested the first respondent to assist in convening a meeting where they wanted to deal with motions for the removal of the applicant and the speaker. I was referred to *Pieterse v The Public Protector.* The citation provided to me was '2014 (3) SA 551'. I asked in which division the matter originated and was told that it is a Gauteng,

Johannesburg matter. It was submitted that it was held in this matter that non-joinder was not fatal.

[10] It was further submitted that I erred and that it was not necessary for the councillors to have been joined. I was also referred to '*Burgers v The Executive Committee of the Municipal Council of the Greater Germiston Municipality*.' I asked for the citation of the matter but Ms Pillay was unable to provide it. She then stated that she is abandoning any reliance on this case. The supplementary notice of appeal also contained lengthy submissions on this point. It was submitted that once the matter was referred to the first respondent by the councillors, they merely became 'passive observers' and merely had a general interest in the matter. It was also submitted that as the municipality employed more than twenty councillors, it was 'impractical and unnecessary to serve documents on each one'. The following was submitted in para 21:

'It was established in *Dube v Schleich [2013] ZALC 16,* where the court held that joining every individual in an organization may be unnecessary when the organization itself is properly represented'.

It was further submitted in para 23 that:

'The Constitutional Court in *Municipality of City of Cape Town v Aon South Africa (Pty) Ltd* emphasized the procedural efficiency and practicality in legal matters concerning governance structures. This precedent affirms that the municipality, as a collective body, adequately responds to legal obligations without necessitating exhaustive lists of individual participants, therefore reinforcing the applicant's stance to only join the municipality'.

No citation was provided. I will return to the significance of these cases later.

[11] I asked counsel for the applicant to address me in particular on the ground of appeal that my characterisation of the application as an *ex parte* application was 'fundamentally flawed and misinterprets the nature of such proceedings.' She could point me to no such finding as nowhere in my judgment did I make such a finding. She conceded that there was no merit in this particular ground of appeal but submitted that what was actually meant was that I erred in finding that there was not adequate service on the respondents and that the urgency of the matter justified the nature of the service. It was also submitted that the court who granted the order was satisfied with the service. I dealt with this issue in some detail in my judgement. Not only was the first respondent

afforded a mere forty minutes notice by email (which contained no reference to an impending urgent application in the subject line), but also a mere three minutes notice after delivery by hand to a person whose designation and position in the first respondent's office is unknown.

[12] It was submitted in para 1 of the supplementary notice of appeal that Uniform rule 4(1) specifically 'allows for dispensation from general rules of service in urgent matters, reflecting the Court's capacity to accommodate expedited processes when justice demands it'. Rule 4(1) does no such thing and makes it mandatory for the sheriff to effect service in one of the prescribed manners set out therein.[7] It is in fact Uniform

[7] Uniform rule 4(1) reads as follows:

'*(a)* Service of any process of the court directed to the sheriff and subject to the provisions of paragraph *(a*A*)* any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners:

(i) by delivering a copy thereof to the said person personally: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(ii) by delivering a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like to the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

(iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than sixteen years of age and apparently in authority over such person;

(iv) if the person so to be served has chosen a *domicilium citandi*, by delivering a copy thereof to a person apparently not less than sixteen years of age at the *domicilium* so chosen;

(v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(vi) by delivering a copy thereof to any agent who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected;

(vii) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (ii) at the place of business of such partnership, firm or voluntary association and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairperson or secretary of the committee or other managing body of such association, as the case may be, in one of the manners set forth in this rule;

(viii) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the municipal manager or a person in attendance at the

rule 6(12)*(a)* that permits a judge to dispense with the forms and service provided for in the rules, where this is deemed expedient in light of the matter before the court.[8]

[13] In *South African Airways SOC v BDFM Publishers (Pty) Ltd*[9] Sutherland J expressed strong views on ineffective service in urgent applications, in particular when an application is brought on less than twenty-four hours' notice:

'Doubtless, SAA appreciated this obvious fact that service was necessary. However, what it and its legal representatives did, pursuant to a responsibility to achieve effective service in order to respect the principle of *audi alterem partem*, was not simply clumsy, but unprofessional. When a litigant contemplates any application in which it is thought necessary to truncate the times for service in the rules of court, care must be taken to use all reasonable steps to mitigate such truncation. In a matter in which less than a day's notice is thought to be justifiable, the would-be applicant's attorney must take all reasonable steps to ameliorate the effect thereof on the would-be respondent. The taking of all reasonable steps is not a collegial courtesy, it is a mandatory professional responsibility that is central to the condonation necessary to truncate the times for service.'

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municipal manager's office of such local authority or to the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule:

Provided that where service has been effected in accordance with subparagraphs (ii);(iii); (iv); (v) and (vii) of subparagraph *(a)*, the sheriff shall in the return of service set out the details of the manner and circumstances under which such service was effected.

*(a*A*)* Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

(b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.

(c) No service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on a Sunday unless the court or a judge otherwise directs.

(d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in a return or affidavit or on the signed receipt that the person serving the process or document has done so.'

[8] Uniform rule 6(12)*(a)* provides:

'In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.'

[9] *South African Airways SOC v BDFM Publishers (Pty) Ltd and others* 2016 (2) SA 561 (GJ) para 24.

[14] Counsel for the first respondent submitted that the statements in the applicant's notice of appeal, that service by email is permissible and has become practise, are simply not correct and that the requirements of service in Uniform rule 4 may only be deviated from when an applicant has made out a case for condonation for such non-compliance.[10]

[15] It was also submitted on behalf of the first respondent that it was further clear from the papers that the applicant had also failed to deal at all with the provisions of section 35 of the General Law Amendment Act 62 of 1955 (the GLAA) and made no case out for condonation for this material failure. It was further contended that I was requested to reconsider the order initially granted by the court and that I dealt with it in terms of the wide discretion I was afforded in doing so in para 37 of my judgment. I found *inter alia* at para 52 that I would not have condoned the applicant's non-compliance with the GLAA nor the extreme short service. It was held in *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and others*[11] that a reconsideration may involve a 'deletion of the order, either in whole or in part, or the engraftment of additions thereto'. I rescinded the order and discharged the rule *nisi* which in my view has the same effect as a 'deletion'.

[16] Counsel for the applicant also submitted that instead of rescinding the order, I should have adjourned the matter to be argued on the opposed roll in due course. She however conceded that the papers were complete and that the applicant had filed a detailed replying affidavit. In my view it would have been an absolute waste of judicial time and resources to simply adjourn the matter to the opposed roll for argument before another judge when I had read and prepared the papers.

[17] I requested the applicant's counsel to address me on the issue of whether the discretion I exercised was one in the true sense or rather in the loose sense as mentioned above. She was unable to address me on this issue. Counsel for the first respondent submitted that the discretion I was called upon to exercise was one in the

[10] DE van Loggerenberg *Erasmus: Superior Court Practice* (Revision Service 23, September 2024) at D1 Rule 4-8 to D1 Rule 4-9.
[11] *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and others* 1996 (4) SA 484 (W) at 487A.

true sense, which in effect meant that it was one that was not touched on appeal unless there was a clear misdirection on the facts or the law.

[18] Counsel for the first respondent, during argument, addressed all the findings made in para 52 of my judgment and submitted that no misdirection was made on the facts or the law and that no other court would come to a different finding.

[19] I was also referred to the particular ground of appeal as set out in para 35 of the supplementary notice of appeal where reference was made to the finding in respect of the applicant's failure to disclose the previous urgent application. It was stated that the applicant was under no obligation to disclose the application 'brought by a third party' as an 'independent initiative to stop unlawful meetings'. It was submitted by first respondent's counsel that the previous urgent application was brought by the speaker for the express benefit of the applicant as he had attempted to stop the councillors from proceeding with both the applicant and the speaker's removal. It was further submitted that this application should have been disclosed and that my finding in that regard was correct.

[20] During the course of writing this judgment it came to my knowledge that the case reference or citation for *Pieterse* might be incorrect.[12] I checked my notes and asked the chief stenographer to listen to the recording, but this was the exact reference provided by Ms Pillay. There is no such case reported in the South African Law Reports, nor in the All South African Law Reports, and no reference to such a case could be found on the website of the South African Legal Information Institute, referred to as 'SAFLII'. No reference could likewise be found for *Burgers*,[13] *Dube*[14] or *Aon SA*.[15] I requested the two law researchers employed at the Pietermaritzburg High Court to peruse the supplementary notice of appeal and to provide all the cited cases to me. Of the nine

[12] Ie *Pieterse v The Public Protector* 2014 (3) SA 551 (GJ) (*Pieterse*).
[13] Ie *Burgers v The Executive Committee of the Municipal Council of the Greater Germiston Municipality* (*Burgers*), where no citation was initially provided.
[14] *Dube v Schleich* [2013] ZALC 16 (*Dube*).
[15] *Municipality of City of Cape Town v Aon South Africa (Pty) Ltd* (*Aon SA*) where no citation was provided in the supplementary notice of appeal.

cases referred to and cited, only two could be found to exist, albeit that the citation of one was incorrect.

[21] I had serious concerns and wanted to afford Ms Pillay an opportunity to provide the authorities she relied on. To this end an email was addressed to her on 18 September 2024, requesting that copies of the two cases referred to in argument as well as the cases cited in the supplementary notice of appeal be provided to me. Both she and Mr De Wet SC, who represented the first respondent, ie the MEC, appeared before me on 20 September 2024. Ms Pillay applied for an adjournment as she had been unable to obtain the cases in the limited time available. I informed her that I could not find the cases she referred me to in court and that it appeared that the cases did not exist. She contended that the case references were provided to her by the 'article clerk', Ms Rasina Farouk, employed by the firm, and that she had not had sight of the cases as she was 'overbooked' and working under a lot of pressure. It then came to light that the clerk, these days referred to as a candidate legal practitioner, was the person who drafted the supplementary notice of appeal. I requested Ms Pillay to make arrangements for Ms Farouk to come to court to explain the origin of the cases cited in the supplementary notice of appeal. She duly appeared before me and upon being questioned she indicated that she obtained the cases referred to from law journals by doing research through her so-called Unisa portal. I asked her which law journals specifically and she could not respond. She requested an opportunity to go back to the office to look at her search history and to provide the relevant cases to me. I asked her if she by any chance used an artificial intelligence application such as ChatGPT to assist with her research but she denied having done so.

[22] I indicated to Ms Pillay and Ms Farouk that I would stand the matter down to enable them to go to the high court library and draw the relevant cases, most of which were cited as either South African Law Reports or All South African Law Reports. They could simply bring the actual law reports into court.

[23] Upon resumption of the matter, Mr Suren Singh, the proprietor of the firm, appeared in court. He had not been present earlier. He indicated that it was not possible

to obtain copies of the cases I required as the librarian wanted him to pay for the copies, which he was not willing to do. He indicated that they needed time to provide me with the relevant copies of the cases cited. I indicated to him that it would be difficult to do so, as the cases did not exist. He insisted that they had in fact already found one of the cases during the adjournment on one of his employees' cell phone, namely the '*Citibank* case' and that he just needed time to provide me with all the cases. The cell phone was handed up to me to show the reference to a Competition Tribunal matter with reasons for a judgment. I will return to this below. I agreed to adjourn the matter to 25 September 2024 to provide Mr Singh and his staff with a final opportunity to provide the cases cited in court at the hearing and in the supplementary notice of appeal. I indicated that I would only accept cases from either the South African Law Reports, All South African Law Reports or SAFLII.

[24] On 25 September 2024 Mr Singh appeared before me. He indicated that as an elderly practitioner (which I took as possibly meaning 'technologically challenged') he had some difficulty in obtaining all the cases referred to but that he tried his best to do so, using 'Google'. His firm apparently did not have access to either the South African Law Reports or the other sources previously referred to. No mention was made of the law journals his candidate attorney, Ms Farouk, allegedly sourced the cases from. When referring to the previous hearing, he indicated that Ms Farouk now felt that she had been placed under undue duress when she had to appear before me, which appearance he submitted was uncalled for. I reminded him of the court's oversight when it comes to issues that arise from the conduct of its officers. In this regard the following was held in *Legal Practice Council v Mkhize*:[16]

'The public's faith in the legal system is a condition for the rule of law. The conduct of lawyers can diminish the legitimacy of the legal system. It is for this reason, that the Court has oversight over the conduct of its officers. The public must be able to trust their lawyers will act ethically and with integrity; and if the public cannot trust their lawyers: they must trust that the Court will not hesitate to act. This is such a case, in which the Court is requested to act to redeem a breach of the public's trust in the legal system.'

[16] *Legal Practice Council v Mkhize* 2024 (1) SA 189 (GP) para 1.

Along the same lines, R Sutherland DJP published an article titled 'The dependence of judges on ethical conduct by legal practitioners: The ethical duties of disclosure and non-disclosure' where[17] he sets out the focus of the article in the opening paragraphs as follows:

'the duty of legal practitioners to respect and support the process of court by making proper disclosure and not mislead the court. It is argued that the culture of contemporary litigation must be more respectful of this interrelationship between the judge and the legal practitioner to produce efficient and fair litigation.'

He stated further:[18]

'Moreover, in a climate of burgeoning caseloads and the unrelenting pressure on courts to deliver on the expectations of the litigating public, it is plain that the dependence of the judge on legal practitioners is acute. The pressures on the judge and on the legal practitioner when busy and, perhaps, overwhelmed, create an environment of fatigue ripe for error, oversight and slackness. The essence of professionalism is being resilient and compliant with ethical duties under such conditions. The ethical responsibilities of the judge and of the legal practitioners are in harmony. The symbiotic relationship between the roles of judge and legal practitioner warrants the respect necessary to produce efficient and fair litigation.' (Footnotes omitted.)

[25] The first judgment handed up to me was *Moseneke and others v The Master of the High Court*. It had no citation and appeared to be merely a copy of the judgment as it was handed down on 6 December 2000. In para 5 of the supplementary notice of appeal the citation read: *'Moseneke v The Master* [2001] 2 ALL SA 585 (T)'. No reference was made to a specific paragraph. There is no such case reported in the All South African Law Reports. There is however a case reported as *Moseneke and others v Master of the High Court* [2001] ZACC 27; 2001 (2) SA 18 (CC); 2001 (2) BCLR 103 (CC) which is the judgement handed up by Mr Singh. This matter deals with the constitutionality of certain sections of the Black Administration Act 38 of 1927 and the relevant regulations published under that act, as well as when direct access to the Constitutional Court is permissible. The case was quoted as it allegedly 'illustrates that the courts should focus on whether the essence of the procedural requirements has been met rather than scrutinising the minutiae of the service process.' The judgment

[17] R Sutherland 'The dependence of judges on ethical conduct by legal practitioners: The ethical duties of disclosure and non-disclosure' (2021) 4 *SAJEJ* 47 at 47.
[18] Ibid at 64.

does however not deal with the issue of service at all and is therefore not authority for the submission made and in my view misleading, to say the least.

[26] The second judgment handed up was *Citibank NA South Africa Branch v Mercantile Bank Limited.* It had no citation and had the heading 'Reasons for Decision'. It emanated from the Competition Tribunal and appeared to have been handed down on 17 January 2005. It dealt with the reasons for the approval of the merger of the parties involved. In para 8 of the supplementary notice of appeal, the citation read: '*Citi Bank NA v L & M Commercial Limited* [1995] 1 ALL SA 352 (A)'. There is no such case in the All South African Law Reports. There is however, published on SAFLII, the following judgment: *Citibank NA South Africa Branch and Mercantile Bank Limited* [2005] ZACT 6. The case was quoted as it 'reinforces that once service is duly completed, the receiving party's internal processing or acknowledgement of the document is not the concern of the serving party.' The reasons for approving the merger had absolutely nothing to do with the issue of service and was likewise not authority for the submission made.

[27] In para 9 of the supplementary notice of appeal, still dealing with the issue of service, the following case is cited: *Hassan v Coetzee* [2004] 3 All SA 121 (T) wherein 'it was held that if one party within a corporate entity acknowledges receipt of documents, it suffices to imply that all relevant parties within that entity have been informed'. There was no reference to a specific paragraph, in fact none of the cases cited contained any references to any particular paragraphs, as has become the norm. There is no such case reported in the All SA Law Reports, the South African Law Reports or on SAFLII. Mr Singh conceded that he could not find the case. It apparently 'came up on a Google search but could not be downloaded'. No explanation was provided or offered as to where Ms Farouk found this case reference.

[28] The next judgment handed up was *Pienaar v Jordaan* [2006] JOL 17230 (T). It dealt with an application for access to information held by a psychologist in a dispute involving access to minor children. In para 11 of the supplementary notice of appeal the case is cited as '*Jordaan v Pienaar* [2002] 1 ALL SA 398 (T)', where it apparently was

concluded that ‘deliberate neglect or evasion of proper service does not invalidate the service or the proceedings’. There is no such case reported in the All South African Law Reports and its inclusion is once again misleading. The case handed up by Mr Singh furthermore has nothing to do with the issue of service, and provides no support for the submission made.

[29] In para 14 of the supplementary notice of appeal where the applicant dealt with the issue of my alleged finding that it was an *ex parte application,* which it had been conceded was an unfounded and incorrect submission, reference was made to *Standard Bank of South Africa Ltd v Lethole* [2002] 2 ALL SA 353 (T) where it was allegedly held that ‘an application is deemed unopposed when respondents do not appear or respond, rather than *ex parte*’. There is no such case reported in the All South African Law Reports nor in the South African Law Reports or on SAFLII. Mr Singh handed up an extract of the *Government Gazette* no 39734, published on 26 February 2016, which was an advertisement of a sale in execution due to take place on 16 March 2016. The name of the case and case number 56584/2015 are for a matter with a similar, if not the same name, namely, The *Standard Bank of South Africa Limited and Makhuvha Golden Lethole* with two further defendants listed in the advertisement. It cannot by any stretch of the imagination have any bearing on the present matter or be support or authority for the submissions made. Mr Singh conceded that he could not find the case quoted in the supplementary notice.

[30] In para 21 of the supplementary notice of appeal, as mentioned above, the issue of the applicant’s failure to join the councillors of the third respondent is dealt with. Reference was made to *Dube v Schleich* [2013] ZALC 16 where the court allegedly held that ‘joining every individual in an organization may be unnecessary when the organization itself is properly represented’. There is no such case published on SAFLII or reported in any law reports. I dealt with the issue of the non-joinder of the councillors in my judgment. Mr Singh could not produce this case. No explanation was provided or offered as to where Ms Farouk found this case reference.

[31] In para 23 of the supplementary notice of appeal, still dealing with the non-joinder of the councillors, as quoted above, the following case is cited, albeit by name only: *Municipality of the City of Cape Town v Aon South Africa (Pty) Ltd* where the Constitutional Court 'emphasized the procedural efficiency and practicality in legal matters concerning government structures'. It was submitted that 'this precedent affirms that the municipality, as a collective body adequately responds to legal obligations without necessitating exhaustive lists of individual participants, therefore reinforcing the applicant's stance only to join the municipality'. There is no such case reported in the law reports or on SAFLII. It is assumed that the applicant was perhaps referring to *City of Cape Town v Aurecon South Africa (Pty) Ltd* [2017] ZACC 5; 2017 (4) SA 223 (CC); 2017 (6) BCLR 730 (CC), which deals with an administrative review in terms of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') and in particular condonation in terms of section 7(1) of PAJA. It has no bearing on the submissions made and is not authority for it either.

[32] In para 25 of the supplementary notice of appeal, the applicant deals with his failure to cite and join Mr Khathide in the proceedings. The following case is cited, namely, *Makro Properties (Pty) Ltd v Raal* 2003 (1) SA 368 where it was allegedly held that 'an employee acting within the ambit of their duties does not need to be cited in their personal capacity when their employer is already a party to the proceedings'. Mr Singh indicated that he had difficulty finding this case. He did pick up the citation on Google but could not download it. There is no such case reported in the South African Law Reports or the All South African Law Reports or published on SAFLII. The so-called authority for the applicant's submissions is accordingly once more non-existent. I dealt with the issue of Mr Khathide's non-joinder in para 26 of my judgment. It is but one of the number of factors I took into account when exercising my discretion.

[33] In para 29 of the supplementary notice of appeal, the applicant deals with his failure to establish the requirements for an interdict. Reliance was placed on *National Treasury v Opposition to Urban Tolling Alliance* (2012) 6 SA 223 (CC). The actual citation is 2012 (6) SA 223 (CC) or [2012] ZACC 18 or 2012 (11) BCLR 1148 (CC), but otherwise it is an existent case. It was apparently held that 'the court must consider the

nature and the extent of urgency when deciding on applications.' The citation, like all the others, contained no reference to a specific paragraph of the judgment. It appears from a cursory reading of the judgment by Moseneke DCJ that the court dealt with the requirements of an interim interdict and not the nature and extent of the urgency as is alleged on behalf of the applicant. The case is clearly not authority for the submissions made.

[34] Mr Singh concluded by submitting that this was the best he could do. When asked to address me on the issue of costs in respect of the last two appearances, he submitted that the parties were called back to court at my request and that his client should not be held liable for such costs. When pressed on costs being paid by his firm, ie costs *de bonis propriis,* he submitted that he has a small firm which should not be mulcted for the additional costs incurred. He reiterated that he stood by Ms Farouk but also did not want to admit to any wrongdoing or take responsibility for her actions. I am of the view that Mr Singh unfortunately had no understanding of how serious the actions of Ms Pillay and Ms Farouk were, and that it simply could not be brushed aside as an oversight or mistake especially when there had been no full disclosure of the source of the cases cited and where there had been an apparent failure of supervision of Ms Farouk's work.

[35] Counsel for the first respondent, Mr De Wet, conceded that he only tried to find the first or second case cited in the supplementary notice of appeal. When he was unsuccessful, he left it at that and decided to wait until the hearing of the matter and if reliance is placed on the cases he would mention the issue with not being able to find the cases. As it turned out, Ms Pillay only relied on the two cases mentioned above, which do not exist but which were not included in the supplementary notice of appeal. Mr De Wet conceded that he should have read or tried to find all the cases cited before the hearing of the application for leave to appeal was heard. In response to Mr Singh's efforts to hand up certain cases, it was submitted that Mr Singh only mentioned Google and not the platforms where the cases were cited. As far as the use of artificial intelligence in legal research is concerned, it was submitted that applications such as

ChatGPT and Meta would often lead one to the correct conclusions but that it tends to make up cases.

[36] Mr De Wet further submitted that if counsel cites a case as authority, it is expected that he or she should at least have read the case. As far as costs were concerned it was submitted that the client should not be made to pay the costs where the legal practitioner's actions are responsible for the incurring of further costs. As far as the application for leave to appeal was concerned, it was submitted that costs should follow the results.

[37] In reply, Mr Singh submitted that although he used Google, he did not check what platforms he used. He further seemed to suggest that as Mr De Wet conceded that he had not read the cases or realised there was a problem with the citations, he was somehow equally to blame for the further appearances and that his firm should not be held responsible for the costs. Mr Singh further repeated Mr De Wet's submission that ChatGPT and Meta would lead to the correct conclusions. It was unclear whether he was conceding that these applications were indeed used and was now trying to submit that the use of these 'sources' would be in order because it apparently lead to the correct conclusions.

Counsel's duty to court

[37] As far as counsel's duty (and this includes an attorney appearing in the high court) to the court is concerned it is perhaps appropriate to start by having regard to rule 57.1 of the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities (the Code of Conduct):

'A legal practitioner shall take all reasonable steps to avoid, directly or indirectly, misleading a court or a tribunal on any matter of fact or question of law. In particular, a legal practitioner shall not mislead a court or a tribunal in respect of what is in papers before the court or tribunal, including any transcript of evidence.'

[38] Counsel's duty to court has also been dealt with extensively in a number of decisions. In *Van Der Berg v General Counsel of the Bar of SA*[19] the following was held: 'But it is a different matter altogether if an advocate knows (as a fact and not merely as a matter of belief) that evidence is false or misleading. For the role of advocacy in furthering the proper administration of justice also gives rise to duties that are owed to the court, primarily a duty upon an advocate not to deceive or mislead a court himself. After observing in *Rondel v Worsley* that the advocate must do "all he honourably can on behalf of his client" the Master of the Rolls went on as follows:

> "I say 'all he *honourably* can' because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court."

In *Incorporated Law Society v Bevan* the Chief Justice expressed it as follows:

> "Now practitioners, in the conduct of court cases, play a very important part in the administration of justice. Without importing any knowledge or opinion of their own which it is entirely wrong that they should ever do they present the case of their client by urging everything, both in fact and in law, which can honourably and properly be said on his behalf. And this method of examining and discussing disputed causes seems to me a very effective way of arriving at the truth as effective a way, probably, as any fallible human tribunal is ever likely to devise. But it implies this, that the practitioner shall say or do nothing, shall conceal nothing or state nothing, with the object of deceiving the Court; shall quote no statute which he knows has been repealed, and shall put forward no fact which he knows to be untrue, shall refer to no case which he knows has been overruled. If he were allowed to do any of these things the whole system would be discredited. Therefore any practitioner who deliberately places before the Court, or relies upon, a contention or a statement which he knows to be false, is in my opinion not fit to remain a member of the profession."' (Footnotes omitted.)

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[19] *Van der Berg v General Council of the Bar of SA* [2007] ZASCA 16; [2007] 2 All SA 499 (SCA) para 16.

[39] In *Ulde v Minister of Home Affairs and another* [20] the following was held:

'In my view it is the obligation of counsel to never mislead a court. Care must be taken that this does not occur through ignorance or negligence. It is self-evident that to mislead a court deliberately is a very serious breach of that obligation. A judge is entitled to take counsel at their word. When an argument is advanced and authority is cited, there is a tacit representation by counsel that no contradictory authority is known to him. Where such a representation is made and there exists a reported superior court's decision in point disapproving the authority cited in support of a proposition, counsel commits an act of negligence if he is ignorant thereof. Where counsel has actual knowledge of the superior court's decision, and remains silent and relies on the disapproved dictum, in my view, counsel misleads the court.'

[40] In returning to the present case, it is in my view clear that the above mentioned principal should be expanded to include that a court should also be able to assume and rely on counsel's tacit representation that the authorities cited and relied upon do actually exist. Ms Pillay blindly relied on authorities provided to her by Ms Farouk, without checking the references when addressing me at the initial hearing. Mr Singh's firm issued the supplementary notice of appeal, drafted by a candidate legal practitioner without anyone, or at least her principal, checking if it was properly done and if the authorities cited were indeed correct, or did in fact exist. Ms Pillay blamed work pressure for her failure to detect the issues with the citations. Ms Farouk, however, was the author of the supplementary notice of appeal and the provider of the further cases quoted at the hearing. She has not been forthcoming with the source of her information or research, except to say that she found the authorities in legal journals, which has remained unnamed.

[41] It was held in *Chetty v Perumaul*[21] that the legal practitioner's duty to court 'requires that lawyers act with honesty, candour and competence . . . lawyers must not mislead the court and must be frank in their responses and disclosures to it'. The same

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[20] *Ulde v Minister of Home Affairs and another* 2008 (6) SA 483 (W) (*Ulde*) para 37.

[21] *Chetty v Perumaul* [2021] ZAKZPHC 66 para 58, where the court quoted, with approval, from the speech of the Honourable Justice Marilyn Warren AC 'The Duty Owed to the Court - Sometimes Forgotten' delivered by the at the Judicial Conference of Australia – Colloquium, Melbourne on 9 October 2009, available at http://www.austlii.edu.au/au/journals/VicJSchol/2009/15.pdf, (last accessed 30 December 2024).

would apply to a candidate legal practitioner. I have serious doubts about the correctness or truthfulness of the contention by Ms Farouk that she in fact found the citations in law journals. With the exception of one case, not a single citation was correct and a few were non-existent, not to mention quoted out of context, hardly what one would find in a law journal. Despite the fact that the matter was adjourned for a few days she did not provide her principal, whom I assume to be Mr Singh, with her research, thereby missing an opportunity to correct any assumptions or misconceptions. Instead I was taken to task by Mr Singh for placing undue pressure on Ms Farouk and unjustifiably insinuating that she might not have a future legal career. Bearing in mind the authorities referred to above, Ms Farouk's actions, in my view, raises serious questions about her conduct but that will be for the Legal Practice Council to investigate and to consider.

[42] The use of artificial intelligence in legal research and documents has not featured much in our case law except for the instance reported in *Parker v Forsyth NO and others*[22] which relates to a matter heard in the Regional Division of Gauteng, held at Johannesburg. A legal practitioner, being the plaintiff's attorney, had dealt with, during argument, the legal status of body corporates, and whether they had the ability to be sued and to sue, as legal entities with limitation, for defamation. The plaintiff's attorney subsequently, at the request of the court and defendant's attorneys, submitted a list of authorities to the defendant's attorneys. The defendant's attorneys could not locate any of the cases referenced and requested to be provided with the source of the authorities. The plaintiff's attorneys eventually admitted that they had neither accessed nor read the cases cited and could not source them. It then came to light that the cases referenced had been sourced from an artificial intelligence chatbot, namely ChatGPT.[23] In dealing with the issue of using an artificial intelligence chatbot for research, the court stated:

'[89] However, the Plaintiffs' legal team did not submit these cases to the court as binding authorities, they submitted them to the Defendants' attorneys as being the cases that they would rely on prior to realising the error of their proposed actions. It seems to the court that they

[22] *Parker v Forsyth NO and others* (Regional Court, Johannesburg, Gauteng) unreported case no 1585/20 (29 June 2023) (*Parker*), and reported on Law Library South Africa as *Parker v Forsyth NO and others* [2023] ZAGPRD 1, available at https://lawlibrary.org.za/akn/za-gp/judgment/zagprd/2023/1/eng@2023-06-29 (last accessed on 30 December 2024).
[23] *Parker* paras 86-87.

placed undue faith in the veracity of the legal research generated by artificial intelligence and lazily omitted to verify the research. Ordinarily, if the court was satisfied that the attorneys had attempted to mislead the court, the consequences would have been far more grave. Not only would it have attracted a costs order *de bonis propriis* against the relevant attorney, but the court would have been compelled to report the attorney's conduct to the Legal Practice Council. As it happens, the court is quite confident that neither the Plaintiff's attorney nor her counsel attempted to mislead the court. It seems that the attorneys were simultaneously simply overzealous and careless.

[90] In this age of instant gratification, this incident serves as a timely reminder to, at least, the lawyers involved in this matter that when it comes to legal research, the efficiency of modem technology still needs to be infused with a dose of good old-fashioned independent reading. Courts expect lawyers to bring a legally-independent and questioning mind to bear on, especially, novel legal matters, and certainly not to merely repeat in parrot-fashion, the unverified research of a chatbot.

[91] Although the plaintiff's attorneys did not intend to mislead anyone, the inevitable result of this debacle was that the Defendants' attorneys were indeed misled into thinking that these authorities were real. As a result, they would have invested a significant amount of time and effort in their futile attempts at tracking down these cases. The hearing of the

22nd of May 2023 was intended for the specific purpose of receiving the relevant case-law authority that turned out not to exist. The costs order sought by the Defendants in this regard is not unreasonable. Indeed, the court does not even consider it to be punitive. It is simply appropriate. The embarrassment associated with this incident is probably sufficient punishment for the Plaintiff's attorneys.'

[43] The court ordered the plaintiff to pay the costs of the hearing of 22 May 2023. No award was made against the plaintiff's attorneys to pay the costs *de bonis propriis*, which appears to be very lenient, but is presumably because the court was not mislead.

[44] More recently, Associate Professor M van Eck published an article titled 'Error 404 or an error of judgment? An ethical framework for the use of ChatGPT in the legal profession',[24] which contained a comprehensive exposition of the legal position in South Africa and various international jurisdictions when it comes to the use artificial

[24] M van Eck 'Error 404 or an error of judgment? An ethical framework for the use of ChatGPT in the legal profession' (2024) 4 *TSAR* 469.

intelligence technologies in legal research and in particular the use of ChatGPT. The author remarked that despite promises by ChatGPT of legal efficiencies and benefits within the legal sector, it is not known for its reliability as often, 'information produced in response to prompts has been shown to be fabricated or fake, especially when such prompts relate to legal information'.[25] *Parker* was discussed at length in Van Eck's article.[26] It was pointed out, correctly in my view, that the case did not provide any direction as to the ethical and professional duties of legal practitioners in the use of ChatGPT and that the court effectively overlooked the plaintiff's attorney's conduct. The author was of the view that the court's approach sets a dangerous precedent, as it was questionable whether the attorney's carelessness merely amounted to negligence.

[45] The author discussed the position in the United States of America, the United Kingdom and Canada[27] and then proceeded to discuss the existing ethical and professional principles with reference to *inter alia* the Code of Conduct, which at present does not expressly provide an expected standard of conduct relating to the use of AI technologies in pleading or legal instruments.[28] The author was of the view that the principles of ethical and professional standards may be 'extrapolated from the existing rules of the legal profession' which has at its centre the 'duty to be honest and act with integrity'.[29] From these values of integrity and honesty all the other standards of conduct flow, namely the duty not to mislead the court, the duty of not using false information and evidence and the duty to act in a supervisory role of all legal services provided.

[46] As far as the duty not to mislead was concerned, the author stated that legal practitioners should not mislead the court either intentionally or negligently.[30] With reference to *Ulde* it was stated that although the consequences of a deliberate act of misleading the court and one of a mistake, ignorance and carelessness should differ, all are serious breaches of the professional conduct expected of a legal practitioner. The

[25] Ibid at 471.
[26] Ibid at 473 onwards.
[27] Ibid at 474 onwards.
[28] Ibid at 482.
[29] Ibid at 482-483.
[30] Ibid at 483.

author concluded that ignorance of the risks of AI technologies is simply not an excuse for compromising the ethical and professional duties of a legal practitioner.

[47] With reference to the duty not to use false information and evidence, the author stated that many of the rules still suffered from the limitation that a legal practitioner must have had some knowledge or suspicion of the falsehood.[31] The author also referred to *Ex parte Hay Property Management Consultants Ltd*[32] and *Ulde* where the duty to refer a court to relevant authorities were discussed. The author was of the view that the reference to relevant authorities may, in the present context, be extended to mean correct or genuine authority as ultimately, legal practitioners are 'required to research the law and present an honest account of the law'.[33] I agree fully with the author's view that presenting fictitious or non-existent cases most certainly does not constitute giving an honest account of the law.

[48] As far as the responsibility for legal services are concerned, reference was made to rule 18.3 of the Code of Conduct which requires a legal practitioner to 'exercise proper control and supervision over his or her staff and offices'.[34] The author was of the view, with which I agree, that despite the limitation of the language, this supervisory role would include the verification of the accuracy and correctness of any information sourced from generative AI systems and other technologies and databases by staff, including candidate legal practitioners, in the legal practitioner's employ.

[49] The author concluded the article by warning *inter alia* that ultimately the legal practitioners are responsible for the work and information produced and must verify the information that has been used, regardless of the source of such information.[35] Failure to do so may result in a breach of ethical and professional duties and ultimately lead to sanctions and disciplinary actions against the legal practitioner.

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[31] Ibid at 485.
[32] *Ex Parte Hay Management Consultants (Pty) Ltd* 2000 (3) SA 501 (W).
[33] *Ulde* para 40. See also Van Eck cited above at 485.
[34] Van Eck cited above at 485.
[35] Ibid at 489.

[50] As mentioned above the real source of the authorities quoted in the supplementary notice of appeal remain unknown, save for a reference to law journals by Ms Farouk. An inordinate amount of legal and judicial resources were spent to find the authorities referred to in court by Ms Pillay as well as in the supplementary notice of appeal, which was a document signed by the applicant's attorney, issued and filed at court and served on the respondent's attorneys and, importantly, relied upon when arguing the merits of the application for leave to appeal. By way of a brief experiment, the ChatGPT application was used and the citation of the *Pieterse* was entered. The system responded that the case did indeed exist and revolved around the powers of the Public Protector. When asked whether it addressed the issue of non-joinder of councillors, the question was answered in the affirmative, which immediately illustrated the unreliability of it as a source of information and legal research. It likewise confirmed the existence of *Burgers* and that the judge was Judge JMS Van D Wessels. In my view, relying on AI technologies when doing legal research is irresponsible and downright unprofessional.

[51] The circumstances of the present matter is significantly more serious than those in *Parker* or any of the other cases referred to in Van Eck's article. The facts actually speak for themselves. I will therefore make an order that my judgment be referred to the Legal Practice Council for investigation and further action. I would urge the council to also obtain a recording of the entire proceedings of both 22 and 25 September 2024, which should contain a request to include any comments made before I entered the court as well as the submissions made by the various representatives of the applicant.

The merits of the application for leave to appeal

[52] Despite the issues highlighted above, I have nonetheless carefully considered all the grounds of appeal raised as well as the submissions made before me. I am of the view that there is no sound and rational basis to conclude that there are reasonable prospects of success on appeal. Furthermore, there are, in my view, clearly no compelling reasons, which would justify granting leave to appeal in this matter.

Costs

[53] The issue of costs is slightly more complex than usual. As far as the costs of the application for leave to appeal and its argument on 13 September 2024 are concerned, I can see no reason why the general rule should not apply in that the costs should follow the result. The first respondent instructed senior counsel and I can find no reason to disallow costs on scale C, which deals with costs of senior counsel, which, in my view, and in the exercise of my discretion is justified, especially in light of the unique features of this case.

[54] The costs incurred in respect of the appearances on 20 and 25 September 2024 is, in my view, a different matter altogether. The appearance on 22 September 2024 was quite correctly at my instance, but was necessitated due to the discovery of the various non-existent, incorrect and/or fictitious authorities relied upon by the applicant's legal representatives. Had Ms Pillay checked the authorities before coming to court, she would have, I hope, informed the court and denounced any reliance on the cases cited. Had whoever signed the supplementary notice of appeal and who was responsible for supervising Ms Farouk's handiwork and research, done the most basic check, the issue would have been discovered even before the document was issued and served. As for Ms Farouk's 'research', the less said the better, but it unfortunately set in motion a very unfortunate chain of events. It would be, in my view, unfair for the applicant to be liable for these costs. After giving the matter extensive thought I am of the view that the only appropriate order would be that the applicant's attorneys, Surendra Singh and Associates, be directed to pay the costs incurred in respect of the appearances on 22 and 25 September 2024 *de bonis propriis* but only on scale A.

[55] I therefore make the following order:

1. The applicant's application for leave to appeal is dismissed with costs, such costs to be on scale C.
2. The costs incurred in respect of the additional appearances on 22 and 25 September 2024 are to be paid by Surendra Singh and Associates, on scale A.
3. The registrar is requested to send a copy of this judgment to the Legal Practice Council (KwaZulu-Natal Provincial Office) for its attention and further action.

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E BEZUIDENHOUT J

Date of hearing: 13, 22 and 25 September 2024

Date of judgment: 8 January 2025

The judgment has been handed down electronically by causing it to be emailed to the parties' legal representatives and by publication on SAFLII. The date and time of hand down will be 8 January 2025 at 12h00.

Appearances:

For the applicant:

Ms S Pillay on 13 and 20 September 2024

Mr S Singh on 20 and 25 September 2024

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