REPUBLIC OF NAMIBIA

NOT REPORTABLE

LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 31/2013

In the matter between:

ALEX KAMWI AND COMPANY INCORPORATED	**1ST APPLICANT**
ALEX KAMWI	**2nd APPLICANT**

and

GOVERNMENT OF THE REPUBLIC OF NAMIBIA	**1STRESPONDENT**
THE ATTORNEY-GENERAL	**2NDRESPONDENT**
THE LAW SOCIETY OF NAMIBIA	**3RDRESPONDENT**

Kamwi v The Government of the Republic of Namibia (A 31/2013) [2013] NAHCMD 380 (20 December 2013)

Coram: SMUTS, J

Heard: 8 November 2013

Delivered: 20 December 2013

Flynote: Applicants challenge constitutionality of ss21 and 22 of the Legal Practitioners Act, 15 of 1995 on the grounds that the prohibition upon the performance of the acts specified in those sections infringes their right to

practice the occupation of law agents. Test in *Trusco Limited v Deed Registry Regulation Board* 2011 (2) NR 726 (SC) applied. Applicants failing to establish that the sections infringe of their constitutional rights. Application dismissed

ORDER

1. The application is dismissed with costs.
2. In the case of the third respondent, the applicants are directed to pay its costs on the scale as between attorney and client.

JUDGMENT

SMUTS, J

(a) The applicants in this application challenge the constitutionality of ss 21 and 22 of the Legal Practitioners Act, 15 of 1995 (the Act). These provisions in essence restrict the practice of law and certain activities associated with it to admitted legal practitioners at the pain of criminal sanction if transgressed. The applicants contend that these restrictions infringe their rights to carry on an occupation or practise the profession of 'law agents'. They apply to have the sections struck down as unconstitutional.

The applicants

(b)

(c) The second applicant is the sole member and director of the first applicant which, he says, is incorporated and registered under the Companies Act.[1] He says that it was formed in 2007 for the business of litigating in the name of and on behalf of any other person and in civil, criminal or labour matters as well as for drawing wills, contracts or any instrument and for the processing of benefit claim applications on behalf of any other person. The second applicant explains that the memorandum of the first applicant includes the object of acting

[1]Act no. 28 of 2004.

‘as agents’. In the founding affidavit, the applicants contend that a law agent such as the first applicant falls within the ambit of the meaning of ‘practitioners’ and is thus ‘entitled to institute or defend of carry to complete any legal proceedings on behalf of a party’.

(d)

(e) When the matter was argued, the second applicant who appeared for the applicants contended that the first applicant was by virtue of its registration as a company entitled to operate as a law agent and engage in the envisaged activities, because its registration as a company would render this permissible. It is important at the outset to stress that this approach is entirely flawed. Registration as a company would certainly not entitle the first applicant to conduct activities which are proscribed by statute, such as the Act. The fact of lawful registration plainly does not constitute a licence to conduct what would otherwise amount to unlawful activities. The activities listed in the founding affidavit which the first applicant is stated to perform are in direct conflict with the sections which the applicants seek to strike down as unconstitutional. I refer to that aspect below.

(f) The second applicant at the time of making his affidavit described himself as a ‘senior second year student for the degree of bachelor of law (LL.B)’. When the matter was argued, he stated in his heads of argument that he is now a third year student. He also referred to other diplomas and qualifications he possesses as a paralegal and in respect of certain subjects which he had studied. None of these purports to be a university degree in law.

(g)

(h) The second applicant states that the thrust of his and the first applicant’s business is the provision of law agency services but that ss 21 and 22 of the Act prohibit these forms of activities at the pain of severe criminal sanctions. This had given rise to the need to challenge the constitutionality of those sections.

The constitutional challenge

(i) In the founding affidavit, the applicants assert that ss 21 and 22 constitute a ‘blanket prohibition at pain of criminalisation of the practising of law

agency services' and that these sections do not constitute 'a reasonable limitation justified in a free and democratic society and required in the interest of the sovereignty and the integrity of Namibia, national security, public order, decency or morality.' The applicants further submit that the prohibitions embodied in ss 21 and 22 are 'hopelessly overbroad and carries within them the wide sweep of their ban legitimate and constitutionally protected activities and thus constitute a blatant infringement of the applicants' right to practise their profession or carry on any occupation trade or business protected under Article 21(1)(j) of the. . . Constitution.'

(j)

(k) The applicants further submit that the prohibitions embodied in the sections are not proportionate to the ill or harm which they seek to curtail.

(l)

(m) That it is the basis of the challenge to the impugned sections contained in the founding affidavit. The applicants are confined to that challenge which is the case which the respondents were required to meet.

(n)

(o) Initially, the applications brought the application against the Government of Namibia, the Speaker of the National Assembly, the Chairperson of the National Council and the President of Namibia. A point of a non-joinder was taken. The applicants met this point by subsequently joining the Attorney-General and the Law Society – and discontinued the proceedings against the Speaker, the Chairperson of the National Council and the President.

(p) Answering affidavits were filed by the Minister of Justice on behalf of the Government and the Attorney-General who was subsequently cited. The Law Society also filed answering affidavits and also opposed the application. Both the governmental respondents and the Law Society denied that the impugned sections infringe upon the applicants' constitutional rights. They take the position that the regulation of the practice of law provided for in the Act constitutes a reasonable restriction upon the right to practise that profession in that the only limitation and restriction to perform the activities specified in ss 21 and 22 of the Act is that they are to be performed by an admitted legal practitioner. They both contend that, by preventing unqualified persons as defined, from performing

those Acts constitutes a reasonable limitation upon the constitutional right to practise the legal profession, protected by in art 21(1)(j) of the Constitution. They submit that this restriction is reasonable in a free and democratic society for the protection of the Namibian public and is required in interest of the public in terms of art 21(2) of the Constitution.

(q) Both sets of respondents also take issue with the manner in which the constitutional challenge has been pleaded by the applicants. They correctly point out with reference to a full bench decision:[2]

> (r) 'The rules of pleading clearly apply to applications in which statutory provisions come under constitutional attack. It is thus imperative that the impugned provisions are precisely identified and the attack upon them substantiated with reference to them so that a respondent is fully apprised of the case to be met and evidence which might be relevant to it. The relevant principle in this context, neatly summarised in *National Director of Public Prosecutions v Phillips and Other* [3], referred to by Mr Trengove, in my view find application in Namibia. This court has also confirmed this principle in the context of a Constitutional challenge.'[4]

(s) The point is taken by both set of respondents that it is incumbent upon persons challenging the constitutionality of provisions not only to specify the sections which are challenged as against the constitutional provisions relied upon, but also to substantiate the challenge in the sense of specifying the manner in which the provisions allegedly infringe the constitutional rights in question with reference to evidence relevant to the challenge.

(t)

(u) The applicants' challenge to the sections is merely with reference to the statement that, as law agents, they would also want to perform the acts set out in ss 21 and 22 which are confined to being performed by persons who are admitted legal practitioners.

The impugned sections and the right to practice a profession

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[2] *Lameck and Another v President of the Republic of Namibia and Others* 2012 (1) NR 255 (HC) at par [58].

[3] 2002(4) SA 60(W) at 106-7 (par 36-37) and the cases usefully collected in par 36 and 37

[4] Supra at

(v) Section 21 of the Act is entitled 'certain offences by unqualified persons'. As the heading would suggest, it creates offences for persons, not enrolled as a legal practitioner, to perform certain acts. The section provides:

'(1) A person who is not enrolled as a legal practitioner shall not-

(a) practise, or in any manner hold himself or herself out as or pretend to be a legal practitioner;

(b) make use of the title of legal practitioner, advocate or attorney or any other word, name, title, designation or description implying or tending to induce the belief that he or she is a legal practitioner or is recognised by law as such;

(c) issue out any summons or process or commence, carry on or defend any action, suit or other proceeding in any court of law in the name or on behalf of any other person, except in so far as it is authorised by any other law; or

(d) perform any act which in terms of this Act or any regulation made under section 81(2)(d), he or she is prohibited from performing.

(2) A candidate legal practitioner shall not accept, hold or receive moneys for or on account of another person in the course of his or her training or attachment to a legal practitioner, or in the course of the conduct of the practice of the legal practitioner to whom he or she is attached.

(3) A person who contravenes any of the provisions of subsection (1) or (2) shall be guilty of an offence and liable on conviction-

(a) in the case of a contravention of subsection (1), to a fine not exceeding N$100 000,00 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment; or

(b) in the case of a contravention of subsection (2), to a fine not exceeding N$50 000,00 or to imprisonment for a period not exceeding 30 months or to both such fine and such imprisonment.'

(w) Section 22 likewises creates offences for persons who are not legal practitioners to perform certain acts. The heading of the section is 'unqualified persons not to prepare certain documents or instruments.' It provides:

'(1) Any person, not being a legal practitioner, who prepares or draws up for or on behalf of any other person any of the following documents, namely-

(a) a will or other testamentary instrument;

(b) any contract, deed or instrument relating to the creation or dissolution of a partnership or a variation of the terms thereof;

(c) any contract, deed or instrument for the acquisition, disposal, exchange or lease of immovable property or a right relating to immovable property, other than a contract for the lease of immovable property for a period less than five years;

(d) the memorandum or articles of association or prospectus of a company, and who charges, demands or receives any fee or reward, whether in cash or in any other form, or knowingly permits any other person to charge, demand or receive any such fee or reward, for the service rendered by him or her in connection with the preparation or drawing up of such document, shall be guilty of an offence and liable on conviction to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

(2) The provisions of subsection (1) shall not apply to-

(a) any person in the employment of a legal practitioner preparing or drawing up any of the documents concerned in the course of his or her employment and on behalf of his or her employer;

(b) a person in the employment of the State or anybody corporate established by any law, preparing or drawing up any of the documents or instruments concerned in the course of his or her official duties;

(c) a person acting in the capacity of trustee of an insolvent estate or executor, administrator or curator, or liquidator or judicial manager of a company or close corporation, or deputy-sheriff or messenger of the court by virtue of an appointment by a competent authority in terms of any law, drawing up or preparing any of the documents concern in the course of his or her statutory duties and receiving such fees as may be allowed by law; or

(d) a registered accountant and auditor who is a member of the Institute of Chartered Accountants of Namibia drawing up or preparing the memorandum or articles of association or prospectus of any company.

(3) No document or instrument referred to in subsection (1) shall be

> invalid by reason only of the fact that it has been drawn up or prepared in contravention of the provisions of that subsection.'

(x) The applicants challenge these sections by relying upon their right to carry on an occupation or profession as protected by art 21(1)(j) of the Constitution which provides:

> 'All persons have the right to
>
> . . .
>
> (j) practise any profession or carry on any occupation, trade or business.'

(y) The rights and freedoms set out in art 21 are subject to the general limitation upon them as set out in art 21(2) which provides:

> 'The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.'

(z) In essence, the applicants' challenge is that they are prevented from performing certain acts (contained in ss 21 and 22) and generally litigating on behalf of persons by the provisions contained in the two impugned sections. They assert that, as law agents, they should also be permitted to perform those acts. This case does not involve a prohibition upon those acts being performed at all – as would be implied by the applicants' reference to the sections as constituting a blanket prohibition. The sections rather prohibit unqualified persons such as 'law agents' who are not admitted legal practitioners from performing the activities specified in those sections.

(aa)

(bb) The question which thus arises is whether the legislature, by regulating that the activities in question by providing that they can only be performed by admitted and enrolled legal practitioners violates or infringes the rights of the applicants as law agents in the sense of being prevented from performing those activities without being an admitted and enrolled legal practitioner.

(cc) In a constitutional challenge also involving art 21(1)(j) dealing with the right to practise the legal profession, the Supreme Court in *Trusco Limited v Deed Registry Regulation Board,*[5] after a thorough survey of prior decisions, stated the following:

> '[25] . . . (T)he right in art 21(1)(j) does not 'imply that persons may carry on their trades or businesses free from regulation'. This approach must be correct for nearly all trades, professions and businesses are regulated by law. Article 21(1)(j) thus does not mean that regulation of a profession will, without more, constitute an infringement of the right to practise a profession that will require justification under art 21(2), because professions are regulated and regulation will often constitute no barrier to practising the profession at all.
>
> [26] As the High Court observed in Namibia Insurance Association, any regulation of the right to practise must be rational but that is not the end of the enquiry. Even if the regulation is rational, if it is so invasive that it constitutes a material barrier to the right to practise the profession, the regulation will be an infringement of the right to practise that will have to be justified under art 21(2). In determining whether a regulation that does constitute a material barrier to the right to practise is permissible under art 21(2), a court will have to approach the question as set out in Africa Personnel Services.
>
> [27] The approach thus has three steps: the first is to determine whether the challenged law constitutes a rational regulation of the right to practise; if it does, then the next question arises which is whether even though it is rational, it is nevertheless so invasive of the right to practise that it constitutes a material barrier to the practice of a profession, trade or business. If it does constitute a material barrier to the practice of a trade or profession, occupation or business, then the government will have to establish that it is nevertheless a form of regulation that falls within the ambit of art 21(2).'[6]

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[5] 2011 (2) NR 726; see also *Africa Personnel Services v Government of Namibia* 2009 (2) NR at 596 (SC); *Kauesa v Minister of Home Affairs and Others* 1995 NR 175 (SC) at p104 – 186.

[6] Supra at par [25] to [27].

(dd) The Act regulates the legal profession and the practice of law. It does so by restricting the practice of the legal profession to legal practitioners who are admitted and enrolled in accordance with the Act and by excluding unqualified persons (defined as those who are not admitted legal practitioners) from performing certain activities which form part of the practice of law at the pain of criminal sanction. The Act further sets the requirements for admission as a legal practitioner, including the academic and professional qualifications. It also authorises juristic persons to conduct a practice where admitted legal practitioners in possession of fidelity fund certificates are the members or shareholders of the duly registered company under the Companies Act and where its memorandum of association provides that all present and past directives are to be liable jointly and severally with the company for its debts and liabilities during their period of office. The Act further regulates the keeping of accounts by legal practitioners and for their discipline including the removal from and restoration to the roll of legal practitioners. The Act also establishes the Law Society of Namibia whose objects include the maintenance and enhancement of the standards of conduct and integrity of all members of the legal profession. The Act also establishes the Legal Practitioners Fidelity Fund with the specific purpose of protecting members of the public from losses occasioned by the theft committed by legal practitioners or candidate legal practitioners of money entrusted to them.

(ee)

(ff) It is within this overall context that the impugned sections are to be considered.

(gg)

(hh) The Act does not, as the applicants would have it in their founding papers, provide for a blanket prohibition in respect of the activities referred to in the two impugned sections, as I have already said. It thus does not prohibit the practice of the legal profession. On the contrary, the Act and specifically the two impugned sections restrict the practice of the legal profession and the activities specified in the two sections to legal practitioners. It thus only prohibits unqualified persons, namely those who are not admitted and enrolled as legal practitioners, from performing the activities in question.

(ii) Not all the activities referred in s22 are limited to admitted legal practitioners. There is an exception created in s22(2) for persons in the employment of legal practitioners to prepare certain of those documents and also for those employed by the State or other institution established by law with the preparations of those documents instruments in the cause of official duty.

(jj) The question thus arises as to whether the restriction of those activities to a legal practitioners, admitted and enrolled in terms of the Act, (and the consequential prohibition of performing those activities by unqualified persons) passes constitutional muster.

(kk)

(ll) Applying the three stage approach set out in the *Trustco* judgment, the first step would be to determine whether the challenged provisions constitute a rational regulation of the right to practise the legal profession. That is the activity expressly specified in s21(1)(a) of the Act as well as encapsulated by the further activities contained in the two sections.

(mm) The legislative purpose behind s21 was recently cogently spelt out by this court[7] with reference to a closely reasoned earlier decision:[8]

> (nn) Maritz J (as he then was) in *Compania Romana De Pescuit (SA) v Rosteve Fishing*37 pointed out that s 21 of the Legal Practitioners Act, 1995 (LPA) is aimed at protecting the public against charlatans masquerading as legal practitioners who seek to prey on the misery and money of its members. He added that s 21 serves the public's interest by creating an identifiable and regulated pool of fit, proper and qualified professionals to render legal services; and that it is aimed at protecting, maintaining and enhancing the integrity and effectiveness of the legal profession, the judicial process and the administration of justice in general.38 The court also reasoned that s 21 is formulated in peremptory terms and that a contravention of its prohibitive provisions constitutes an offence carrying with

[7] *Maletzky v Zaaruka*, *Maletzky v De Klerk t/a Hope Village* [2013] NAHCMD 343 (19 November 2013).

[8] *Compania Romana De Pescuit (SA) v Resteve Fishing* 2002 NR 297 (HC) at 302.

> it severe punishment. For that reason, any court process instituted on behalf of a litigant by a person other than an admitted practitioner therefore constitutes a fatal defect and such process is to be visited with nullity. In the court's judgment, the authority to practise is essential for the proper administration of justice. The legislature intended that if a person, other than a legal practitioner, sues out any court process or commences or carries on any proceeding in a court of law in the name or on behalf of another person, such process or proceedings will be void *ab initio.* Any 'looseness' in the enforcement of the well-established practice and of the Rules of Court in that regard is likely to bring the administration of justice into disrepute, erode the court's authority over its officers and detrimentally affect the standard of litigation.'[9]

(oo) Examples of the highly prejudicial consequences which would follow if persons unlawfully holding themselves out as legal practitioners are then spelt out with reference to several decided cases by the court in *Compania Romana*. These included instances where non admitted practitioners appeared in criminal matters on behalf of the accused. This approach was reaffirmed recently by this court in the context of applications brought under the Prevention of Organised Crime Act, Act 29 of 2004 in Ex Parte Prosecutor-General: In re application for a forfeiture order in terms of s59 of Act 29 of 2004.[10]

(pp) The prejudicial consequences of unqualified persons engaging in legal practice were spelt out in greater detail by this court in the *Maletzky* matter in the following way:

> **'No remedy for member of public against charlatans**
>
> [58] A legal practitioner has a contractual relationship with the client. That relationship imposes a duty upon the legal practitioner to exercise due skill and care in the conduct of the client's affairs. If he fails to, he is liable in delict towards the client. It is most improbable that a member of the public, who sues upon negligence of a non-admitted person who renders him legal

[9]Supra at par [57].

[10](POCA 8/2011) [2013] NAHCND 282 (14 October 2013).

services under the cloth of a cession, can ever be successful. In my view, public policy is against such a result.

Indemnity of Fidelity Fund absent

[59] The purpose of the fidelity fund is to reimburse persons who may suffer pecuniary loss as a result of theft committed by a legal practitioner, a candidate legal practitioner attached to, or a person employed by, a legal practitioner, of any money or other property entrusted by or on behalf of such persons to the legal practitioner or to such a candidate legal practitioner or a person employed in the course of the legal practitioner's practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity. A member of the public who suffers at the hands of a non-admitted charlatan will not be reimbursed by the fidelity fund.

The LSN's suspension function absent

[60] The LPA establishes a Disciplinary Committee which exercises disciplinary control over legal practitioners and candidate legal practitioners. The statutory body is empowered to entertain complaints from any person who is affected by the conduct of a legal practitioner and is competent to impose penalties for unprofessional or dishonorable or unworthy conduct. An appeal procedure is further available to a party aggrieved by the decision of the Committee. These remedies are once again not available to a party aggrieved by the conduct of a person who is not an admitted legal practitioner but providing legal services under the guise of a cession.

Court's suspension function equally absent

[61] The courts derive their suspension powers and functions from s 37 of the LPA, on application by the LSN. The court is further competent to, instead of suspending the legal practitioner who is guilty of unprofessional or dishonorable or unworthy conduct, and if in the circumstances of the case it thinks fit so to do, reprimand the legal practitioner; or order the legal practitioner to pay a penalty not exceeding N$ 10 000 or may make any order as to restitution in relation to the case. Legal practitioners are officers of the

> court. They are expected to display a standard of professionalism in their dealings with the court. The functioning of our courts is vitally dependent on the assumption that legal practitioners will act with complete honesty and integrity. Without it the courts simply cannot function. The court's supervisory function does not extend to non-admitted persons.'[11]

(qq)

(rr) It is thus clear that the public interest is served by restricting the practice of law and the activities referred to in s21 and 22 to admitted legal practitioners. The legislature set out the requirements and qualifications for admission as a legal practitioner. The applicants have not challenged any of those requirements or qualifications as constituting a material barrier to practise law. There were not even referred to in the applicants' founding affidavit.

(ss)

(tt) It would follow that the restriction upon the performance of the activities set out in s21 and s22 to admitted legal practitioners (and the consequential prohibition of their performance by unqualified persons as defined) does not in my view constitute an unreasonable or irrational regulation of the right to practise the legal profession. On the contrary, that restriction is in my view both reasonable and rational.

(uu) The question then arises, upon the formulation of the test in the *Trustco* – matter, as to whether, even though the sections constitute a rational restriction, the impugned sections nevertheless are so invasive of the right to practice that they constitute a material barrier to the practice of the profession. In my view, they do not.

(vv) The applicants have put up no material to show that the regulation of the activities referred to by restricting their performance to admitted legal practitioners is so invasive of the right to practise as to constitute a material barrier to the practice of that profession. It does not assist them to characterize their work as 'law agents.' If, as unqualified persons, they would seek to perform the activities listed in ss 21 and 22, they would plainly fall foul of the prohibitions contained in those sections.

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[11] Supra at pa 58-61, footnotes excluded.

(ww) Given the singular lack of evidence or material, placed before the court in support of their challenge the applicants have not shown that these sections constitute a material barrier to the practice of the legal profession. It would then not be incumbent upon the Government to establish that the sections constitute a form of regulation falling within the ambit of art 21(2). Even though it was thus not incumbent upon the Government to establish that in the face of this singularly unspecified attack upon these provisions, the Government has in any event established that they constitute a form of regulation falling within the ambit of art 21(2). This court has spelt out in the *Compania Romana* and the recent *Maletzky* matters that it is in the public interest to prohibit unqualified persons to practise the legal profession with carefully detailed reference to the adverse consequences which would otherwise arise. Measures of this nature are thus necessary in a democratic society and are thus in my view justified. The protection of the public in this way is in my view within the values and principles which are essential for a free and democratic society to function.

(xx) It follows that the applicants have fallen hopelessly short of establishing that the impugned sections infringe upon their constitutional rights. It further follows that the application is to be dismissed.

Costs

(yy) Mr Tjombe, who represented the Law Society in these proceedings forcefully argued that the dismissal of the application should be accompanied by a special order as to costs. He referred to the answering affidavit filed on behalf of the Law Society in which it is contended that the applicants' conduct is objectionable, unreasonable, unjustified and oppressive in the context of previous litigation in which the second applicant was involved and where he had also taken issue with ss21 and 22. In those proceedings, the second applicant was singularly unsuccessful.[12] Mr Tjombe pointed out that the Law Society was required to litigate against the applicants with public funds and that it should not

[12] *Law Society of Namibia v Kamwi and Another* 2005 NRHC: Ex Parte In re: *Kamwi v Law Society of Namibia* 2009 (2) NR 569 (SC).

be out of pocket as a consequence of repeatedly being required to act against the second applicant in respect of strikingly similar issues. He submitted that the conduct of the applicants is also deplorable, also justifying a special costs order. He referred to authority in support of his contention.[13] He also referred to the disparaging comment of the Supreme Court in *Ex Parte Kamwi* concerning similar arguments advanced by the applicant where it was stated:

> 'One only need to imagine Mr Kamwi advising a lay client along such lines to see the real danger to the public posed by an unadmitted person purporting to act as a legal practitioner.'[14]

Those well founded remarks would also be applicable to the conduct of this application, both in respect of form and substance. The papers were not properly indexed at all. Extensive written argument was filed which included factual matter not contained in the founding papers or even in reply (although the replying affidavits were termed answering affidavits by the applicants).

(zz) It would seem to me that the respondents have been put to unnecessary trouble and expense by the initiation of this abortive application, particularly in the context of the judicial comment made in the course of the second applicant's prior litigation which also concerned s21 of the Act.[15]

(aaa) It would also appear from the applicants' founding affidavit that they engage in the activities proscribed in the two sections, despite the prohibitions contained in them.

(bbb) It is of course of fundamental importance that litigants should not be deterred from raising constitutional challenges by punitive costs orders. Indeed,
(ccc) a court may even in appropriate instances consider not mulcting an unsuccessful challenge with costs. But I am persuaded by Mr Tjombe that special considerations arise in this matter as far as the costs of the Law Society are concerned upon an application of the principles set out in the *Alluvial Creek*

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[13] *South African Bureau of Standard v GGS-AU (Pty) Ltd* 2003 (6) SA 588 (T) at 592.

[14] Supra at 575

[15] *In re Alluvial Creek* Ltd 1929 CPD 532 at 535.

matter.[16]

Conclusion

(ddd) I accordingly make the following order:

1. The application is dismissed with costs.
2. In the case of the third respondent, the applicants are directed to pay its costs on the scale as between attorney and client.

(eee)

(fff) _____

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DF SMUTS

Judge

[16]Supra at 535.

APPEARANCES

APPLLICANTS:	A. Kamwi In Person
1st AND 2nd RESPONDENTS:	M Boonzaier Instructed by Government Attorney
3rd RESPONDENT:	N Tjombe Instructed by Tjombe-Elago Law Firm