

Copying and Pasting in the Legal Profession

Cost de Bonis Propriis orders against legal practitioners in the *Lembore and Others v Minister of Home Affairs and Others* case

INTRODUCTION

On 29 July 2024, the Johannesburg High Court delivered judgment in the matter of Degefa Lembore and Others v the Minister of Home Affairs and Others [2024] ZAGPJHC 749. In this case the attorneys of record had filed six identical applications on behalf of their clients, where only the names and countries of origin had differed between the applicants.

The Johannesburg High Court had to consider the legal representative's ethical duty as officers of the court in the representation of their clients in cases, and how copying and pasting from precedents (where it constituted an abuse of court process) could violate this ethical duty.

COST DE BONIS PROPRIIS

The phrase "*cost de bonis propriis*" directly translates as "'costs out of one's own pocket"¹. It is deemed to be an extraordinary measure, taken when a court is of the view that a legal representative's negligence or misconduct is so severe that it warrants a cost order to be made personally against a litigant or legal representative to mark to court's displeasure at that person's conduct².

ETHICAL DUTIES OF LEGAL PRACTITIONERS

All legal practitioners are bound to adhere to the Code of Conduct promulgated by the Legal Practice Council³. While attorneys and advocates have a duty to advocate for their clients' best interests, they also have an equally important duty to assist the court in the fair administration of justice and to maintain the decorum of the court⁴.

There can sometimes be a fine line between protecting your clients' best interests and violating an ethical rule or standard. In the *Lembore* case, the court raised its concern with the conduct of some legal practitioners, which (in the court's view) undermines the legitimacy and function of the courts⁵.

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LEMBORE CASE OVERVIEW

The critical issue for determination in the *Lembore* matter⁶ was whether the applicants (immigrants in South Africa who approached the Johannesburg High Court to interdict any deportation, detention and prosecution until their refugee status was lawfully determined in terms of the Refugees Act⁷) were allowed to remain in South Africa (and not be deported) until a decision relating to their refugee status had been taken. When it came time for the Johannesburg High Court to consider the issue of legal costs, it raised its concerns about the identical format of all six applications that were instituted by the attorneys of record.

THE COURT'S JUDGMENT

In the subsequent judgment on the issue of legal costs, the judges of the Johannesburg High Court proceeded to criticise the conduct of the applicants' legal representatives, by utilising one application as a template and then "copying-and-pasting" its content into the other five applications before the court⁸.

Not only did the attorneys copy and paste, but they made mistakes in their copying and pasting, with the result that many of the applications were factually incorrect. As a result the reproduced affidavits failed to speak to each applicant's individual experiences and raised concerns on the truthfulness of each applicant's version⁹.

The Johannesburg High Court reflected on the conduct of the legal representatives as being misleading, making reference to "cottage industries" tactics that were used to replicate the affidavits of vulnerable refugees who were held in custody awaiting deportation. The court noted that the applications (as would be the case for the majority of similarly placed vulnerable persons) could not speak English and for that reason the court questioned whether they were even able to understand the information contained in the affidavits put in front of the court in their cases¹⁰.

In the court's view, this sloppy drafting constituted an abuse of the judicial process which could not be ignored by the court and its custodians. The court labelled the abuse "deliberate" and held that it "displayed a lack of care" towards the parties of interest¹¹.

The legal representatives were subsequently ordered to pay the cost of the main application de bonis propriis and for the judgment to be referred to the Legal Practice Council and the Minister of Justice and the National Director of Public Prosecutions for further investigation¹².

CONCLUSION

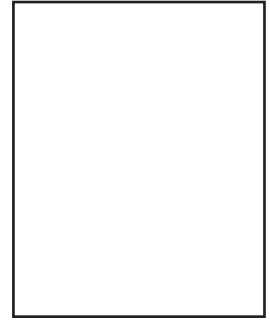
Legal practitioners have an ethical and moral duty to both clients and the court, to uphold the rule of law by acting professionally and diligently with every case that has been brought in their care¹³.

Bringing badly drafted court papers before a court is not in the best interests of the client – in fact, it could most certainly backfire (as it almost did for the applicants in this case, had the court not been so discerning) and result in matters being dismissed or a client losing a case as a result of the unprofessional conduct of a legal representative in the drafting of the court papers. Whilst it might be true that using a template might, in some instances, decrease legal costs (which might arguably be in a client's best interests), a legal practitioner has a duty to their clients not to slavishly (or sloppily) utilize precedents that will detract from, rather than enhance, their clients' best interests.

Any conduct of a legal practitioner that deviates from the standard repertoire of ethical rules and required standard of professional conduct prescribed may result in a court order compelling legal practitioners to have to reach deep into their own pockets to foot their clients' (or their clients' opposing parties') legal costs orders.



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¹⁴ "De bonis propriis." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/de%20bonis%20propriis>. Accessed 22 August 2024.

² *South Africa Traders' Association and Others v Chairperson, Gauteng Liquor Board and Others 2009 (1) SA 565 CC.*

³ *South African Legal Practice Council Code of Conduct in terms of Section 36 (1) of the Legal Practice Act 28 of 2014 (as amended).*

⁴ *S v Khathutshelo and Another 2019 (1) SACR 480 (LT).*

⁵ Seegobin, R (2022) "Restoring dignity to our courts: the duties of legal practitioners" Website: https://groundup.org.za/copy_article/restoring-dignity-to-our-courts-the-duties-legal-practitioners. Accessed 22 August 2024.

⁶ *Lembore and Others v Minister of Home Affairs and Others [2024] ZAGP JHC 102; [2024] 2 All SA 113 (GJ).*

⁷ *Refugees Act 130 of 1998 (as amended).*

⁸ *Lembore and Others v Minister of Home Affairs and Others [2024] ZAP JHC 749.*

⁹ See *supra* note 8.

¹⁰ *Broughton (T) (2024) "Judge slams lawyers who preyed on refugees." Website: <https://groundup.org.za/article/judge-slams-lawyers-who-preyed-on-refugees/>. Accessed 22 August 2024.*

¹¹ See *supra* note 8.

¹² See *supra* note 9.

¹³ *Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others [2023] ZACC 34; 2024 (1) BCLR 70 (CC); 2024 (2) SA 58 (CC).*