

# South African Legal Practice Council v Kgaphola and Another

(795/2023) [2025] ZASCA 66; 2026 (1) SA 84 (SCA)

## INTRODUCTION

The Supreme Court of Appeal in *South African Legal Practice Council v Kgaphola and Another* was tasked with determining whether the High Court had correctly applied the legal framework governing disciplinary proceedings against legal practitioners, and whether the Respondent's conduct rendered him unfit to continue practising as an attorney.

The central issue before the court was whether the High Court had properly conducted the established three-stage enquiry applicable to misconduct proceedings against legal practitioners. This enquiry requires a court to determine:

1. whether the alleged misconduct has been established on a balance of probabilities;
2. if so, whether the practitioner is a fit and proper person to remain on the roll; and
3. the appropriate sanction where necessary.

## THE HIGH COURT'S FINDING

The High Court was found to have materially misdirected itself at the first stage of the enquiry. While the Legal Practice Council had raised multiple complaints, from practising without a fidelity fund certificate to the failure to comply with FICA obligations as well as the failure to respond to correspondence, the High Court failed to make factual findings on most of these allegations.

## THE SUPREME COURT OF APPEAL'S FINDING

Reassessing the matter afresh, the court found that several instances of misconduct had been proven on a balance of probabilities. Most notably, the court reaffirmed that practising without a valid fidelity fund certificate is a serious breach of professional duty and a criminal offence, regardless of whether the practitioner claims not to have actively serviced clients. The court further confirmed that a failure to respond to correspondence from the Council undermines professional integrity and the regulatory system.

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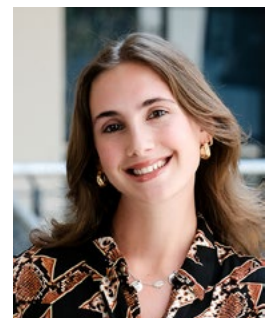
A significant aspect of the judgment concerned the Respondent's conduct during the disciplinary proceedings themselves. Rather than engaging substantively with the allegations, he unjustifiably impugned the integrity and motives of the Council. The court emphasised that such conduct amounts to unprofessional behaviour. Legal practitioners are under a duty to cooperate with regulatory enquiries and to place all relevant facts before the court.

## CONCLUSION

Ultimately, although the court found the Respondent guilty of serious unprofessional conduct, it concluded that his actions did not render him unfit to practise. Thus, a 12-month suspension with imposed conditions was enforced. The judgment underscores the Court's commitment to maintaining professional standards while applying proportional disciplinary measures and serves as a firm warning against both regulatory non-compliance and obstructive conduct in disciplinary proceedings.



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