

COMMITTED TO BUILDING A BETTER LEGAL PROFESSION FOR ALL

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LAW SOCIETY WELCOMES SCA JUDGEMENT

Bayport Securitisation Limited and Another v University of Stellenbosch Law Clinic and Others (Case no 507/2020) [2021] ZASCA 156 (4 November 2021)

On 4 November 2021 the Supreme Court of Appeal (SCA) handed down a judgment which provides indispensable certainty on the issue of legal fees chargeable to enforce credit agreements. This required an analysis of the relevant provisions of the National Credit Act, 34 of 2005 (the NCA), which according to the SCA ushered in a host of new forms of protection for consumers.

The SCA essentially had to place a construction on 'collection costs' as defined in section 1 of the NCA and to decide whether 'collection costs' referred to in s 101(1)(g), read with s 103(5) of the NCA, includes all legal costs pre and post judgment.

If so, the legal fees would be subject to the requirement contained under s 103(5) of the NCA which provides that the aggregate interest, fees and charges, including collection costs, as covered in the NCA, cannot exceed the unpaid balance of the consumer's principal debt at the time of the default.

The LSSA has always held the view that legal fees do not form part of the collection cost. The Western Cape High Court however rejected this view. The said Court found that 'collection costs' include all legal fees and are subject to s 103(5) of the NCA. The LSSA resolved to take the judgment of the Western Cape High Court on appeal to the SCA. As a professional interest organisation, the LSSA is pursuant to its constitution obligated to 'at all times, also have regard to broader interests of the public whom the profession serves, and to endeavour to reconcile, where they may conflict, the interests of the profession and the public'. The SCA upheld the LSSA's appeal.

The SCA reiterated that South African courts have recognised the distinction between collection costs and litigation costs. To this extent, the courts have recognised that a legal practitioner (attorney) who executes the recovery mandate through a legal process, is remunerated through costs awarded by the court, which costs are subject to maximum tariffs prescribed under law. The costs are awarded to successful litigants and it provides them some indemnification for having incurred the legal costs in pursuing legal action.

The SCA illustrated that if the legal fees cannot exceed the unpaid balance of the consumer's principal debt, it would severely limit a court's discretion to make appropriate cost orders, including punitive cost orders in the event of frivolous litigation that may deserve reprimand. The SCA also confirmed that the statutory limit under s 103(5) of the NCA does not apply post-judgment. This means that litigation costs are not considered collection costs, as defined in the NCA, whether pre or post litigation.

The SCA engaged in a delicate judicial balancing exercise which confirmed the well-established distinction between collection and litigation costs. This in turn recognises the need for credit providers to approach the courts for appropriate relief, including, when successful, cost orders that are subject to maximum tariffs prescribed by law.

The LSSA would like to thank its legal team, Andre Bloem from RW Attorneys (Rooth Wessels Attorneys), Advocate Andre Badenhorst SC and Pieter Skein Attorneys of Bloemfontein.

[Click here to read the SCA judgement.](#)

FIDELITY FUND CERTIFICATE PORTAL

The LSSA would like to remind attorneys that the 2022 Fidelity Fund Certificate (FFC) application portal is open for applications. The LPC has requested legal practitioners to immediately access the portal to apply for their FFC online and check progress of their application. In terms of s 85 (7) of the Legal Practice Act, a FFC is valid until 31 December of the year in which it was issued.

[Click here to create a profile and apply for your 2022 FFC.](#)
[Click here to read the LPC notice.](#)
[Click here for the FFC application LPC provincial contact details.](#)

LSSA SUBMISSIONS

The LSSA has made a number of submissions on proposed amendments to legislation and policy documents.

Board Notice 66 of 2021: Road Accident Fund

The Board of the Road Accident Fund (the Board) published for comment a notice prescribing 'terms and conditions on which claims for compensation shall be administered'. The LSSA is of the view that the entire notice is *ultra vires* and unenforceable for various reasons.

In terms of the Road Accident Fund Act, the Board does not have the power to amend the Act or the Regulations. By imposing additional requirements for a valid lodgment of a claim, the Board effectively seeks to amend the Act.

As regards the schedule of additional documents required, the LSSA noted that many of the 'official documents' are not readily available. Furthermore, these documents cannot be elevated to preemptory requirements for substantial compliance.

The proposed new requirements will also prejudice direct claimants, many of whom will not only be unable to decipher and understand the provisions of the preemptory claim requirements, but will also find the additional requirements costly. The proposed new requirements could inadvertently cause claims to become prescribed.

[Click here to read the submissions.](#)

The eThekweni Metropolitan Municipality Credit Control and Debt Collection Amendment By-law

The LSSA has considered the proposed eThekweni Metropolitan Municipality: Credit Control and Debt Collection Amendment By-law, 2021 and submitted that the proposed amendment be withdrawn, as it will not pass constitutional muster.

[Click here to read the submissions.](#)

Deeds Registries Amendment Bill

Having considered the Deeds Registries Amendment Bill, 2020, the LSSA submitted comments, including, as regards, the proposal to extend the duties of the Registrar to record land tenure rights and the proposed sanction for the unauthorised execution or signature of a preparation clause. Apart from some issues, the proposed amendments generally appear to be sensible, practical and intended to bring the Deeds Registries Act in line with formal requirements.

[Click here to read the submissions.](#)

Companies Amendment Bill

The LSSA also considered the Companies Amendment Bill and made substantial comments. One of the proposals made by the LSSA was that, in order to enable South Africa to comply with its international obligations as far as money laundering and terrorism is concerned, a deeming provision dealing with the 'true owner' of the company be inserted.

[Click here to read the submissions.](#)

MANAGEMENT OF CROWDED OUT MATTERS

Deputy Judge President A P Ledwaba has issued a directive pertaining to the management of crowded-out matters in the Pretoria High Court. The objective of the directive is to ensure that only matters that are verified trial ready and comply with the directive be allocated dates on the trial roll.

In the directive, DJP Ledwaba explains that space has been reserved for the allocation of matters that were on the trial roll and were crowded out or not allocated by the Court between March 2020 to June 2021 because of the non-availability of judges. The statements for these matters need to be uploaded by 19 November 2021, failing which, the crowded-out matters will not be allocated trial dates.

[Click here to read the directive.](#)

LSSA CONGRATULATES NEW LPC CHAIRPERSON

The LSSA has congratulated Ms Janine Myburgh on her appointment as the LPC's new chairperson. The LSSA commends the outgoing council on a job well done and is as confident in the new council.

Below is the full newly elected council.

- Ms Janine Myburgh - Chairperson (attorney)
- Mr Kennedy Tsatsawane SC - Deputy Chairperson
- Ms Kathleen Matolo-Dlepu - Executive Committee member (attorney)
- Mr Miles Carter - Executive Committee member (attorney)
- Mr Priyesh Daya - Executive Committee member (attorney)
- Mr Brenton Joseph SC - Executive Committee
- Mr Pritzman Busani Mabunda - Executive Committee (attorney and LPPF designate)
- Ms Anthea Platt SC - Minister's designate
- Mr Thulane Kgomo - Attorney and Minister's designate
- Ms Reghana Tulk - Advocate and Minister's designate
- Prof Danwood Chirwa - Deans of Law designate
- Mr Clement Marumoagae - attorney and Teachers of Law designate
- Mr Dick Khubana - Legal Aid SA designate
- Ms Naxolo Maduba-Silevu - attorney
- Ms Nolitha Jali - attorney
- Mr Lucian Edwin Companie - attorney
- Dr Llewelyn Gray Curlewis - attorney
- Ms Paula De Azevedo - attorney
- Mr Seopi Makhafole - attorney
- Ms Elizabeth Baloyi-Mere SC
- Ms Kameshni Pillay SC
- Ms Margaretha Engelbrecht SC
- Mr Craig Watt-Pringle SC

[Click here to read LPC notice.](#)

REMINDER: DURBAN HIGH COURT RENOVATIONS

The LSSA would like to remind practitioners that due to renovations, the services offered at the High Court, Durban will be accommodated at the Durban Magistrate Court during the December 2021/January 2022 recess period.

[Click here to read the notice.](#)

UPDATE ON JUSTICE DEPARTMENT RANSOMWARE ATTACK

Although some progress has been made since the Department of Justice's systems were compromised on 5 September 2021, causing loss of access to all electronic systems and networks, including e-mails, there are still various issues that need to be sorted. The Department is currently in the testing phase to ensure all systems are functional. Please note that all departmental offices (Masters, Magistrate's courts etc) were affected. A statement will be issued by the department, which the LSSA will share when all systems are totally functional again.

SADC LA ACGM POSTPONED

The SADC Lawyers Association has advised that its annual conference and general meeting which was scheduled to take place from 24 to 26 November has been postponed to a date to be announced soon. SADC LA sincerely apologise for any inconvenience caused.

SARS NOTICE

With effect from 1 December 2021, SARS will levy a late submission of return penalty where one or more personal income tax returns are outstanding. As a transitional measure for the first year, the one tax return or more rule will only apply to the 2021 tax return. Prior to 1 December 2021, SARS could only levy a late submission of return penalty where two or more outstanding tax returns. This older rule will remain in place for one more year for 2020 and earlier returns.

The deadline for individual non-provisional taxpayers is 23 November 2021. In a notice, SARS has stated that taxpayers in the auto-assessment population, who neither accepted nor edited and submitted their simulated assessments by this date, will receive an original assessment based on an estimate in accordance with s 95 of the Tax Administration Act, 2011.

[Click here to read the SARS notice.](#)

VACANCIES

The Judicial Service Commission (JSC) has published a list of vacant judicial positions. Nominations should reach the Secretariat of the JSC by no later than 6 December 2021. Interviews will take place from 4 to 8 April 2022.

[Click here to view the vacancies.](#)

The KZN Regional Court has also published an advertisement for acting appointment posts for the Regional Magistrates. The acting period is from 10 January to 30 April 2022. Applications must be submitted by 30 November 2021.

[Click here to view the advertisement.](#)

DONT FORGET TO FOLLOW US ON SOCIAL MEDIA

Please note that most of the information shared in this newsletter has already been shared, as it happened, on our social media platforms. Follow us on [Facebook](#), [Instagram](#), [LinkedIn](#) and [Twitter](#) to get the latest information. We endeavour to keep you abreast at all times via our social media platforms.

KEEP UPDATED WITH EDUCATIONAL TRAINING

LEAD is an LPC accredited legal education training provider.

CIVIL MEDIATION | 22 NOVEMBER - 3 DECEMBER

This ten-day course deals specifically with civil mediation. Past used appropriately, can offer a valuable approach to reduce the time and costs of litigation. Whether you wish to practise as a mediator or be in a position to advise your clients or represent them at mediations, you will benefit greatly from attending the course.

[Click here to register.](#)

BASIC DRAFTING SKILLS FOR CONTRACTS (WEBINAR) | 16 & 17 NOVEMBER

Bail and bail appeals are of the most important and common court proceedings in South Africa. This webinar will address the crucial aspects surrounding the laws and procedures of bail applications and bail appeals in court.

[Click here to register.](#)

CYBERLAW AND ELECTRONIC TRANSACTIONS (WEBINAR) | 22 & 23 NOVEMBER

This workshop will provide you with the necessary skills in drawing and opposing Bills of Costs together with the relevant ethical background and rules. It will provide a better understanding of the difference between civil litigious and non-litigious matters and the consequences of this difference.

[Click here to register.](#)

RULES OF EVIDENCE | 09 NOVEMBER

This course is not merely about the rules of evidence. It is about how you can effectively apply the rules in a trial, and even in motion proceedings. This course will assist you with practical, tested techniques on how to present evidence in a manner that will persuade a judge to find in your favour. The course will also assist you with relevant skills, from taking instructions to presenting evidence in a court. A practical manual will be distributed to all attendees which is intended to serve as a reference point when completing their work.

[Click here to register.](#)

DE REBUS
www.derebus.org.za

The November issue of *De Rebus* is out! You can read it at www.derebus.org.za

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