**HIGH COURT OF SOUTH AFRICA**
**(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 121865/2025**

**(1) REPORTABLE: YES**
**(2) OF INTEREST TO OTHER JUDGES: YES**
**(3) REVISED.**
**DATE: 14 MAY 2026**

**SIGNATURE**

In the matter between:

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| **KGOMOTSO RAMALEPE** | First Applicant |
| **MARWESHE ATTORNEYS** | Second Applicant |

and

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| **MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** | First Respondent |
| **THE LEGAL PRACTICE COUNCIL** | Second Respondent |
| **BLACK LAWYERS ASSOCIATION** | Third Respondent |

Summary: *Attorneys' rights to appear in the High Court – Legal Practice Act 28 of 2014 – section 25(3)(a) thereof, limiting the right of attorneys to only be entitled to appear in the High Court, the Supreme Court of Appeal and the Constitutional Court after a period of three years*

*from date of admission as a legal practitioner, declared unconstitutional and invalid. Declaration of unconstitutionality referred to the Constitutional Court in terms of section 172(2)(a) of the Constitution.*

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## ORDER

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1. Section 25(3)(a) of the Legal Practice Act 28 of 2014 is declared inconsistent with the Constitution and therefore invalid.

2. The declaration of unconstitutionality is referred to the Constitutional Court in terms of sections 167(5) and 172(2)(b) of the Constitution.

3. The first respondent is ordered to pay the applicants' costs.

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## JUDGMENT

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*The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 14 May 2026.*

**DAVIS, J**

## Introduction

[1] The first applicant is an attorney of this Court. She was admitted as a legal practitioner by this Court on 10 June 2025. In terms of section 25(3)(a) of the Legal Practice Act[1] (the LPA), she is precluded from appearing in the High Court, the Supreme Court of Appeal and the Constitutional Court for a period of three years. Advocates who may have been admitted as legal practitioners on the same day, are not so precluded.

[2] The first applicant contends that the distinction between attorneys and advocates in the above fashion is discriminatory and infringes on her rights as a legal practitioner. She therefore sought an order declaring the relevant section unconstitutional.

## Role-players

[3] The first applicant is as described above. The second applicant is the law firm where the first applicant practices.

[4] The applicants cited the Minister of Justice and Constitutional Development (the Minister) as the first respondent and the Legal Practice Council (the LPC), as the second respondent.

[5] The Black Lawyers Association (the BLA) was cited as the third respondent.

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[1] 28 of 2014.

[6] The prescribed notices in terms of Rule 16A were delivered and also published on a designated site of the South African Legal Information Institute (Saflii).

**The legislative framework**

[7] Prior to the advent of the LPA, the two branches of the profession, being attorneys and advocates, were regulated by two different Acts. These were respectively the Attorneys Act[2] and the Admission of Advocates Act[3].

[8] For purposes of this judgment, I do not deem it necessary to refer to the history of the two professions, as they existed prior to the introduction of the uniform concept of a "legal practitioner". That has already been done in other judgments[4]. The LPA now governs the admission of all legal practitioners, with the LPC maintaining separate rolls for those legal practitioners who wish to practice as attorneys and those who wish to practice as advocates. The distinction between referral advocates and advocates practising with trust accounts is not relevant for the purpose of this judgment and has received judicial attention elsewhere[5].

[9] What is however, necessary to state, is that historically, attorneys did not have the right of appearance in the Superior Courts of the land[6]. Such right of appearance was reserved for advocates. This differentiation between the two branches of the profession, was slightly ameliorated by the Right of Appearance in Courts Act[7] (the Rights Act).

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[2] 53 of 1979.
[3] 74 of 1964.
[4] See *SALPC v Alves* 2021 (4) SA 158 (SCA).
[5] *Morgan v Minister of Justice and Constitutional Development* (1055106/2024) [2025] ZAGPPHC 1202(11 November 2025).
[6] As later defined in the Superior Courts Act 10 of 2013.
[7] 62 of 1995.

[10] In terms of the Rights Act, an attorney who wished to acquire the right to appear in the High Court (then called the Supreme Court) and the Supreme Court of Appeal (the Appellate Division, as it was previously known) may have applied to the registrar of a provincial division, who may then issue a certificate to the effect that such an attorney has the right of appearance in the Supreme Court.

[11] The requirements for the issuance of such a certificate was that the attorney would have to prove that he or she had an LLB degree (or its equivalent); that there were no proceedings pending against the attorney for his striking or suspension from the roll of attorneys and that the attorney has been practising as an attorney for at least three years or has been performing community service at a law clinic for the same period.

[12] In 2005, section 4(4) of the Rights Act was amended to make it clear that an attorney who has been issued with a certificate as contemplated above "... *shall be entitled to appear in any court throughout the Republic*". A similar nationwide right has all along been afforded to advocates but was again expressly confirmed in section 2 of the Rights Act.

[13] The above remained the position until the "new dispensation" was introduced by the LPA, which provided for the admission of legal practitioners in a single Act and for the governing of all legal practitioners by a single body, the LPC.

**The rights of appearance**

[14] Section 25 of the LPA prescribes the rights of appearance of legal practitioners. The first requirement is that the right of appearance may only be exercised by a practitioner who has not been struck off the roll or who is not

subject to an order of court suspending him or her from practising[8]. This basic requirement is unsurprising and not in dispute in this application.

[15] The LPA further provides that although a legal practitioner may appear "*on behalf of any person in any court in the Republic*"[9], the rights of attorneys to appear in the High Court, the Supreme Court of Appeal and the Constitutional Court are limited by the requirement that such an attorney must first obtain a certificate from the registrar of the division in which such an attorney was admitted as a legal practitioner[10]. The rights of advocates are not limited by such a requirement.

[16] The LPC has been properly served and cited as a party. In terms of the LPA[11], the LPC is the custodian of the legal profession and, accordingly, the proper party representing all legal practitioners in relation to their rights and obligations. The LPC has not opposed the relief sought.

[17] The requirement for obtaining a certificate as contemplated above, is that such an attorney must "satisfy" the relevant registrar that the attorney has been practising for "... *a continuous period of not less than three years*"[12] and is in possession of an LLB degree[13].

[18] An alternative requirement provides for attorneys who do not hold LLB degrees. They can only acquire the right of appearance in question if they have "... *gained the appropriate relevant experience, as may be prescribed by the Minister* ..."[14]. The reference to attorneys without LLB degrees, refers to

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[8] Section 25(1). This section also does away with previous requirements that an attorney needed to be separately admitted in each different division of the High Court to be allowed to practice in each divisions area of jurisdiction.
[9] Section 25(2).
[10] Sections 25(3) and 25(4).
[11] Sections 3(c) and (d).
[12] Section 25(3)(a)(i).
[13] Section 25(3)(a)(ii).
[14] Section 25(3)(b).

attorneys admitted as such prior to the coming into operation of the LPA, which now requires an LLB degree as a minimum qualification for both attorneys and advocates.

[19] Section 25(3)(a)(i) of the LPA contains a proviso for attorneys admitted under the LPA and who wish to acquire the rights of appearance before the expiry of the three-year period. The proviso reads as follows: "... *this period may be reduced in accordance with rules made by the Council if the attorney has undergone a trial advocacy programme approved by the Council as set out in the Rules*".

**The applicants' contentions**

[20] The applicants attack section 25(3)(a)(i) of the LPA on various constitutional grounds.

[21] Firstly, the applicants contend that the impugned provision encroaches on the rights of equality[15] of legal practitioners.

[22] The applicants secondly contend that the imposition of a limitation on the rights of appearance of attorneys infringes on their rights to dignity[16].

[23] Thirdly, the applicants contend that the limitations imposed by the impugned section irrationally infringe on the rights of attorneys to exercise their chosen profession freely[17]. Although a profession, such as that of an attorney, may be regulated, the limitation imposed by such regulation would only pass constitutional muster if it is rationally related to a legitimate government purpose.

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[15] Section 9(1) of the Constitution provides that *"...everyone is equal before the law and has the right to equal protection and benefit of the law and section 9(2) proclaims that "Equality includes the full and equal enjoyment of all rights and freedoms"*.

[16] Section 10 of the Constitution provides that *"Everyone has inherent dignity and the right to have their dignity respected and protected"*.

[17] Section 22 of the Constitution provides that *"Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law."*

They argue that, not only is the section under consideration not rational, but, insofar as it limits the applicants' rights to exercise their chosen profession freely, it does not satisfy the requirements which the Constitution provides for justifiable limitation of rights[18].

**The Minister's position**

[24] The Minister's primary contention is that the relief claimed is moot. The basis for this contention is that legislative proposals are afoot that will render a declaration of unconstitutionality obsolete.

[25] The legislative proposal to which the Chief Director: Legislative Development and Implementation, who deposed to the affidavit on behalf of the Minister, referred was the introduction of the Legal Matters Amendment Bill (the Bill), which had previously been tabled in Parliament on 12 March 2025.

[26] Clause 15 of that Bill provides for the amendment of section 25 of the LPA by the deletion of sections 25(3) and 25(4) and for the deletion of any limitation contained in section 25(1). The Bill also amends the provisions relating to the rights of appearance of candidate attorneys and pupil advocates, but those provisions are not relevant to this application.

[27] The long and short of it is that the Minister contends that the legislative proposals contained in the Bill will remove all and any limitations on the rights of attorneys to appear in the High Court, the Supreme Court of Appeal and the Constitutional Court and that the present application is therefore unnecessary.

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[18] Section 36(1) of the Constitution provides that *"the rights in the Bill of Rights may be limited only in terms of law of general application, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom ..."*.

[28] As an aside, the Minister expressed the view that the organised members of the advocates' profession should have been included.

[29] Lastly, the Minister contended that, should the Court uphold the declaration of unconstitutionality sought by the applicants, such a declaration should be suspended for a period of 24 months *"... for Parliament to review the impugned provision"*.

**Evaluation of the equality argument**

[30] The test to determine whether persons' rights to be treated equally have been infringed upon has been comprehensively set out in *Harksen v Lane*[19] (*Harksen*). There, the Constitutional Court laid down a two-stage test to determine this question.

[31] First, the court must determine whether the provision sought to be impugned differentiates between people or categories of people and, if so, whether this differentiation serves a legitimate government purpose. If the provision fails the test, it violates the guarantee of equality before the law.[20]

[32] If the provision passes the test, the court must still enquire, secondly, whether the differentiation amounts to discrimination and whether such discrimination is unfair[21].

[33] Is there differentiation? The answer must be in the affirmative. As far as the rights of appearance of legal practitioners admitted in terms of the LPA are concerned, section 25 differentiates between advocates and attorneys. Advocates, upon admission as legal practitioners, automatically have rights of

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[19] 1998 (1) SA 300 (CC) par 43.
[20] *Ibid* par 42.
[21] *Ibid* par 44. See also *Jordaan & Others v Minister of Home Affairs* 2025 (6) SA 323 (CC) at par 31.

appearance in the High Court and higher appellate courts. Attorneys, however, must wait three years before they acquire such rights.

[34] As already mentioned, the distinction between attorneys with LLB degrees and those without is less significant, since the LPA now requires an LLB as the minimum qualification for admission. As the number of attorneys who have been admitted as such prior to the commencement of the LPA decreases over time, so will the extent of this differentiation. It is, however, also not the focus of this application, and neither is the alternative requirement contained in section 25(3)(b) of the LPA, relating to "appropriate relevant experience".

[35] Once it has been determined that there is a differentiation, the next question is whether the differentiation serves a legitimate government purpose. If the intention of the provision was to ensure that only practitioners with a certain level of advocacy skills should appear in the High Court and the higher appeal courts, that may conceivably be a legitimate objective. A high level of skill in advocacy and drafting of pleadings in the Superior Courts beneficially increases the assistance that the decision-makers in those courts receive from practitioners, which in turn, should lead to improved representation of litigants and the proper ventilation of issues. It is axiomatic that this would be in the interests of justice.

[36] The manner in which section 25(3) has been formulated is, however, destructive of such a notion. The acquisition of skills by way of a trial advocacy programme is not prescribed as a requirement for being granted rights of appearance; it is merely offered as a route to a possible reduction in the three-year period.

[37] The possible government objective of increased advocacy skills is further undermined, and in my view, fundamentally so, by the arbitrary imposition of a three-year waiting period. This period is prescribed as simply a function of the

passage of time. There are no experience requirements or skill enhancement functions attached to it. In the words of one of the counsel for the applicants, an admitted attorney needs only to "languish at home" for the prescribed period before he or she suddenly, on year three plus one day of having been in practice, may start appearing in the Constitutional Court.

[38] Similarly, if the differentiation between advocates and attorneys were to be based on the difference in the nature of their practical vocational training (pupillage for advocates and candidate attorneyship for attorneys), this differentiation is not reflected in the three-year requirement. Without any requirement for the acquisition by attorneys during the three-year period of such advocacy skills which advocates may acquire during pupillage, the imposition of the period is arbitrary. The proviso which provides for the reduction of this period, does not otherwise detract from this arbitrariness.

[39] When considered as above, there can be no legitimate governmental purpose that justifies one branch of the legal profession waiting for three years before being granted the rights of appearance in question, while the other branch of the profession has no waiting time imposed on it.

[40] It is significant that, insofar as the terms of the proposed legislative amendments contained in the Bill may reflect any "legitimate government purpose", the intention is to do away with all limitations on attorneys' rights of appearance and not to impose any advocacy skills requirements.

[41] Section 25(3)(a) of the LPA, therefore, fails the first test referred to above, which means that it violates section 9(1) of the Constitution. It is therefore unnecessary to consider the second test. As currently formulated, the short answer to the question of whether section 25(3)(a) of the LPA impermissibly violates the

equality rights of attorneys admitted as legal practitioners, must therefore be in the affirmative.

**The right to dignity**

[42] Section 10 of the Constitution states that everyone has inherent dignity and guarantees that such dignity must be respected and protected.

[43] In *Affordable Medicines Trust v Minister of Health and Others*[22] the link between the practice of a profession and one's dignity has been emphasised thus: "*... one's work is part of one's identity and is constitutive of one's dignity. Every individual has the right to take up any activity which he or she believes himself or herself prepared to undertake as a profession and to make that activity the very basis of his or her life. And there is a relationship between work and the human personality as a whole...though economic necessity or cultural barriers may unfortunately limit the capacity of individuals to exercise such choice, legal impediments are not to be countenanced unless clearly justified in terms of the broad public interest.*"[23]

[44] The applicants contend that the limitation imposed on the right of attorneys to appear adversely affects their dignity.

[45] Except for the proviso already referred to above (by which an attorney can reduce the three-year period), the effect of section 25(3)(a) is that attorneys are rated as less worthy than advocates as far as rights of appearance go, at least for a period of three years. This clearly impacts the dignity of attorneys.

[46] The wording of the section does not indicate, nor did the Minister contend, that this limitation is so that attorneys can, during the three-year period, gain any

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[22] 2006 (3) SA 247(CC).
[23] *Ibid* at paras 59 and 60.

experience or skills which would result in them being equally qualified, compared to advocates or attorneys with say, four years' seniority, to appear in the High Court or the appellate courts mentioned. It is not difficult to appreciate why recently admitted attorneys feel that they suffer an indignity to be told by the impugned section that they should wait for three years before they are allowed to proverbially talk where the adults talk.

[47] I therefore find that section 25(3)(a) of the LPA encroaches on the Constitutional rights to the dignity of persons in the same position as the first applicant.

**Right to freedom of trade, occupation and profession**

[48] The first applicant makes the point that she is a qualified, admitted legal practitioner, practising as an attorney. This is her chosen occupation and profession. For three years, she has, however, not been allowed to represent, by way of appearance, clients in the High Court and the other courts mentioned. Her freedom to practise her chosen profession is therefore limited for this period by section 25(3)(a).

[49] Section 22 of the Constitution, which guarantees the right of citizens to choose a trade, occupation or profession, itself determines that such practice may be regulated by law.

[50] Once such a regulation limits the right itself however, there must be a rational connection between the limiting legislation and the achievement of a legitimate government purpose[24]. As already indicated above during the analysis of the equality challenge to the impugned section, the three-year period, without an accompanying provision imposing the attainment of any qualification or advocacy skills, is simply arbitrary. It brooks no argument that arbitrary

[24] *Ibid* at par 74

provisions can never satisfy the test of constituting a legitimate government purpose.

[51] While it is trite that any constitutionally guaranteed right may be limited by a law of general application, such limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom[25].

[52] In an instance such as this, the burden of justifying the limitation (as opposed to an onus in the ordinary sense) rests on the Minister[26]. The Minister has elected not to advance any justification. Instead, the Minister's deponent stated the following: "*The impugned provision can also be said to infringe the fundamental right to freedom of trade, occupation and profession, that is, the right to activities by means of which a livelihood is pursued*". As will be seen later, when the Bill is discussed, the deponent also refers to the present statutory provisions as an "*unsatisfactory state of affairs*".

[53] The result of the above is that the applicants' attack on section 25(3)(a) of the LPA, based on the unjustifiable limitation of attorneys' rights in terms of section 22 of the Constitution, must also succeed.

**The mootness argument**

[54] The Minister's deponent stated that it was, in his words, "*of crucial importance*" to point out that the Bill has been introduced to the National Assembly in order to seek to remedy the "*unsatisfactory state of affairs brought about by the impugned provision*". It has already been the subject of consideration

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[25] Section 36(1) of the Constitution.

[26] See, for example, *Minister of Home Affairs v National Institute for Crime Prevention and the Re-integration of Offenders (NICRO)* 2005 (3) SA 280(CC) at para 34.

by Parliament and will seek to address "*the mischief which is the basis of this application*".

[55] Based on this, the deponent, who was quick to point out that the Minister did not oppose the application, contended that the application was moot and a waste of judicial resources.

[56] The "explanatory affidavit" delivered on behalf of the Minister was deposed to on 31 January 2026. The most recent activity mentioned in that affidavit, indicating the Bill's progress on the way to possible promulgation, was that the Bill was tabled in Parliament on 12 March 2025 and published for comment by the public on 13 June 2025. The affidavit is silent on the Bill's progress through the enactment process since then, and counsel for the Minister could not, from the bar, enlighten me further as to any such progress.

[57] The Bill not only deals with amendments to the LPA but also seeks to amend the Judicial Service Commission Act[27], the Promotion of Access to Information Act[28], the Prevention and Combating of Corrupt Activities Act[29], the Child Justice Act[30] and the Cybercrimes Act[31]. It is abundantly clear from a reading of the Bill (a copy of which has been annexed to the explanatory affidavit) that a plethora of wide-ranging and highly technical amendments to existing legislation are contemplated thereby. No information has been furnished to the Court as to the progress with or extent of finality of the legislative processes relating to these proposed amendments. It is not unheard of for legislation to take seemingly interminable periods of time before promulgation (take the proposed

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[27] 9 of 1994.
[28] 2 of 2000.
[29] 12 of 2004.
[30] 75 of 2008.
[31] 19 of 2020.

Mediation Bill[32], for example, which has now been in the making for more than a decade).

[58] Until such time as section 25(3)(a) of the LPA has been repealed by Parliament, the relief sought by the applicants cannot be moot, and neither is there any reason for a determination of the impugned sub-section's constitutionality to await an undeterminable period of time for an uncertain event to take place. This is also based on the Minister's assumption that the legislative amendments will indeed be granted without amendment itself.

[59] The mootness point, although only raised as an "explanation" and not as an opposition, must therefore fail. The issue of whether there should be any suspension of a declaration of invalidity, should be a matter for the Constitutional Court to determine, in the event that such a declaration be confirmed.

[60] Another point which the Minister "raised", but not relied on in opposition to the application, was that "the Bar Council" (presumably being a reference to the General Council of the Bar, and excluding other associations of advocates such as the Pan African Bar Association and the South African Bar Association ) and the Law Society of South Africa had not been cited as parties to the application.

[61] The applicants' counter was that the voluntary associations of legal practitioners may conceivably have views on the relief sought, but the granting of it will not have a direct or prejudicial impact on their rights, which would otherwise remain intact. Moreover, a formal Rule 16A notice has been published on the Saflii website for more than six months prior to the hearing of the application, without any response.

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[32] Project 94 of the Law Reform Commission.

[62] In these circumstances, I find that there was no misjoinder fatal to the application.

[63] As mentioned before, the Black Lawyers Association (the BLA) was cited as a respondent, but neither the papers nor counsel for the applicants could satisfactorily explain why this was done. The BLA has not participated in the matter, and no relief was sought against it. Nothing, therefore, turns on this unnecessary citation.

**Costs**

[64] Although the matter served before me as a special motion, it remained in essence an unopposed application. The fact that the Minister had filed an explanatory affidavit did not convert the matter to an opposed motion. This much is also clear from the Minister's formal notice to abide. The point was also made that the Minister had an obligation to place her views before the Court[33].

[65] However, in the exercise of the Court's discretion, and following on the principle that private parties should not pay the costs if they are successful in protecting constitutional rights[34], I find that the Minister should pay the costs of the application.

**Order**

[66] In the premises, it is ordered as follows:

1. Section 25(3)(a) of the Legal Practice Act 28 of 2014 is declared inconsistent with the Constitution and therefore invalid.

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[33] See: *Van der Merwe v Road Accident Fund* 2006 (4) SA 230 (CC).
[34] See: *NL v Estate Late Frankel* 2018(2)SACR 283(CC) and *Mohlaba v Minister of Cooperative Governance* 2025(4)BCLR 442(CC).

2. The declaration of unconstitutionality is referred to the Constitutional Court in terms of sections 167(5) and 172(2)(b) of the Constitution.

3. The first respondent is ordered to pay the applicants' costs.

**N DAVIS**
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 22 February 2026

Judgment delivered: 14 May 2026

APPEARANCES:

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|---|---|
| For the First Applicant: | Mr M Marweshe |
| Attorney for the First Applicant: | Marweshe Attorneys, Pretoria |
| For the Second Applicant: | Adv G S Mapuma |
| Attorney for the Plaintiff: | Marweshe Attorneys, Pretoria |
| For the First Respondent: | Adv R A Ramuhala |
| Attorney for the First Respondent: | The State Attorney, Pretoria |

No appearance for Second and Third Respondents