

TWO LANDMARK HIGH COURT JUDGMENTS RESHAPE LEGAL PRACTICE



Attorneys' Three-Year Wait for Rights of Appearance Declared Unconstitutional

The Gauteng Division of the High Court, Pretoria in the judgment of *Ramalepe and Marweshe Attorneys v Minister of Justice and Constitutional Development and Others* (121865/2025) declared section 25(3)(a) of the Legal Practice Act 28 of 2014 ("LPA") unconstitutional and invalid.

Section 25 (3)(e) requires an attorney to have practised continuously for at least three years before qualifying for a certificate to appear in the High Court, the Supreme Court of Appeal, and the Constitutional Court. This provision however does not apply to Advocates who do not meet this requirement.

The applicants in this matter, Ms Kgomotso Ramalepe and Marweshe Attorneys sought to have section 25 (3)(e) of the LPA declared unconstitutional on the basis that the distinction between attorneys and advocates in the impugned section is discriminatory and infringes on attorneys' rights to equality, dignity and to exercise their chosen profession freely.

The Minister of Justice and Constitutional Development argued that the relief sought by the applicants is moot due to the Judicial Matters Amendment Bill, before Parliament, which seeks to address this particular issue and other issues faced by legal practitioners. The court found in favour of the applicants in that the argument could not be moot for as long as section 25(3)(e) of the LPA remained applicable and had not been repealed.

In applying the *Harksen v Lane* test, the court found the three-year waiting period was not linked to any competency assessment and operated as a purely time-based restriction, making it arbitrary and irrational. The court also held that treating attorneys as less capable than advocates for three years undermined their professional dignity, and that the limitation on their right to practise their profession could not be justified.

The declaration of invalidity has been referred to the Constitutional Court for confirmation. Section 25(3)(a) therefore remains in force until confirmed or otherwise by the Constitutional Court.

The Law Society of South Africa (LSSA) unequivocally supports the proposed amendment of sections 25(2), 25(3) and 25(4) of the Legal Practice Act 28 of 2014 as contained in the Judicial Matters Amendment Bill, 2025. As submitted to the Portfolio Committee on Justice and Constitutional Development on 3 June 2025, the current limitations and additional requirements imposed on attorneys in relation to rights of appearance are inconsistent with the constitutional imperatives of equality, transformation and access to justice.

These provisions create unnecessary barriers within the legal profession and undermine the objectives of the Legal Practice Act, which seeks to establish a transformed, unified and inclusive profession. The removal of these restrictions will advance substantive equality, enhance opportunities for all legal practitioners, and promote greater access to justice. In a modern and transformed legal profession, no duly admitted and enrolled legal practitioner should be excluded from appearing before any court in the Republic on the basis of statutory distinctions that no longer serve a legitimate purpose. The proposed amendments

therefore represent an important and necessary step towards achieving the transformative vision envisaged by the Legal Practice Act.

The LSSA welcomes the judgment and will monitor its enforcement.

[Read the full judgment here.](#)

High Court widens access to the SCA: SCA Rules declared unconstitutional

In a separate judgment delivered on 30 July 2026, the Gauteng Division of the High Court, Pretoria delivered another significant judgment in the matter of *Marweshe Attorneys and Others v Minister of Justice and Constitutional Development and Others* (120909/2025).

The applicants in this matter sought to have the definition of 'lodging documents with the registrar' contained in Rule 1(1) of the Rules Regulating the Conduct of Proceedings of the Supreme Court of Appeal of South Africa (SCA Rules) declared invalid. SCA Rule (1) under the heading 'Definition' provides that:

'lodging of documents with the registrar' means the lodging of documents with the registrar through an attorney practising in Bloemfontein or, if a party is not represented by an attorney, by registered post or by that party after prior services of copies of such documents on any other party.

The basis of the attack on this provision relates specifically to the portion of 'by an attorney practising in Bloemfontein' which the first applicant argued prevented them, any many attorneys who practise outside the Bloemfontein jurisdiction, from lodging appeal documents for their pro bono clients. They also argued that this rule infringes on the client's right of access to the courts. It is worth noting that if the clients were unrepresented, they would be able to do this themselves via registered mail.

The applicants also contended that this rule treats attorneys practising in Bloemfontein different to those practising elsewhere, thereby unjustifiably limiting the attorney's equality rights together with their rights of freedom of trade, occupation and profession. Further to that, the applicants argued that affording the exclusive right to attorneys practising in Bloemfontein infringes on other attorneys' right to dignity, particularly when considered against the provision of section 25 of the Legal Practice Act.

The court found that the rights of the applicants had been unjustifiably limited, despite the argument raised by the Association of Bloemfontein SCA Practitioners which relied on the *Social Justice Coalition and others v Minister of Police and Others* case to argue that the purpose of the court rules is to advance the objective of efficient and expedition litigation.

Accordingly, Rule 1(1) of the SCA Rules was declared unconstitutional and the court ordered that the definition be read as if the words 'practising in Bloemfontein' have been deleted and excised therefrom.

This judgment has significant implications for legal practitioners, particularly those undertaking matters in the Supreme Court of Appeal. For now, the rule stands, until the declaration in invalidity has been confirmed or otherwise by the Constitutional Court.

The Law Society of South Africa (LSSA) views the judgment as a progressive step towards expanding access to justice in South Africa. As the legal profession awaits the finalisation and publication of the Community Service Regulations by the Department of Justice and Constitutional Development, there is growing anticipation that their implementation will further strengthen the profession's commitment to serving the public. The expedited introduction of community service requirements is expected to accelerate the integration of community service and pro bono work into legal practice, including among firms whose primary focus has traditionally been correspondent work. Ultimately, this development has the potential to enhance access

to legal services for vulnerable communities while reinforcing the profession's broader social responsibility and constitutional mandate.

[Read the full judgment here.](#)

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