

ISAAC SWARTZBERG

JUDGEMENT

28 March 2008

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SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***I Swartzberg v The Law Society of the Northern Provinces
(Case No 83 / 07)***

Media Statement

Today the Supreme Court of Appeal ('SCA') split on whether or not 77 year old Mr Isaac Swartzberg, who was originally admitted as an attorney on 18 October 1995 and practised as such in Pretoria, should be readmitted and enrolled as an attorney.

On 13 August 1999, Mr Swartzberg's name was struck from the Roll of Attorneys by the Pretoria High Court. The gist of the complaints against him were that he had failed to keep proper books of account over a protracted period resulting in deficiencies in his trust account of approximately R249 000. He had furthermore devised a stratagem to conceal those shortages and thus hoodwinked his auditor into certifying that his books of account were properly maintained and on the strength of that secured a Fidelity Certificate from the Law Society. Flowing from those allegations the appellant was arraigned in the Pretoria Regional Court during 2000 on a charge of theft. He was convicted on his plea of guilty and sentenced to a fine of R100 000 or three years' imprisonment. He elected to pay the fine. A further term of two years' imprisonment was conditionally suspended for a period of four years. One such condition was that he repay the amount of R220 000 to the Fidelity Fund of the Law Society within seven days of sentence. That condition, he duly complied with.

During August 2002 the appellant brought an application for his readmission. That application was withdrawn but subsequently renewed by him some 18 months later. The application was dismissed by the High Court on 17 May 2005. Approximately one year later the appellant deposed to an affidavit in support of a fresh application for his readmission. That application which was dismissed by the Pretoria High Court on 29 September 2006, forms the subject of the present appeal.

According to the SCA, the fundamental question to be answered in an application of this kind is whether there has been a genuine, complete and permanent reformation on the part of the individual seeking readmission as an attorney and that the defect of character or attitude which led to him being adjudged not fit and proper to practise as an attorney no longer exists.

Four of the Judges of Appeal held that the appellant had failed to discharge the onus of convincing the court that he is a fit and proper person to be readmitted as an attorney. The fifth Judge of Appeal concluded that the appellant had discharged the onus resting upon him. The appeal was accordingly dismissed with costs.

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