NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO. EL 2569/2021

In the matter between:

THE LEGAL PRACTICE COUNCIL Applicant

and

COR VAN DEVENTER Respondent

JUDGMENT IN RESPECT OF
APPLICATION FOR THE STRIKING OFF
OF THE RESPONDENT FROM THE
ROLL OF LEGAL PRACTITIONERS

HARTLE J

[1] The applicant, although initially praying that the respondent be struck off the roll of legal practitioners, appeals to this court to impose a sanction against him arising from certain claimed "unprofessional conduct".[1] Despite the wide powers afforded to the

[1] Before the coming into operation of Chapter 4 of the Legal Practice Act, No. 28 of 2014 ("the LPA") on 1 November 2018, offending conduct was categorized as "unprofessional", "dishonest" or "unworthy". The

applicant under the provisions of Chapter 4 of the Legal Practice Act, No. 28 of 2014 ("LPA") to effectively discipline legal practitioners under its regulatory authority for misconduct,[2] section 44 (1) of the LPA provides that its provisions do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner. In any event the powers of the applicant do not extend to a striking off of a practitioner from the roll or his/her final suspension from practice. This requires an order of this court.[3]

[2] In proceedings of this nature the court must firstly decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. Secondly, the court must consider (if the ultimate object is to strike the practitioners' name from the roll or to suspend him/her from practice) whether the person concerned 'in the discretion of the court' is not a fit and proper person to continue to practice. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. Thirdly, the court must enquire whether in all the circumstances the attorney is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice."[4]

[3] The enrolment of a practitioner on the roll in the first place assumes the premise that he is fit and proper to be enrolled and that he will continue to maintain such a standard of conduct. A legal practitioner serves at the pleasure of the court and the statutory dispensation under the LPA does not deprive it of exercising its common law

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new act adopts the all encompassing concept of "misconduct". Section 36 of the LPA provides that the Code of Conduct, defined in section 1 as meaning "a written code setting out rules and standards relating to ethics, conduct and practice for legal practitioners and its enforcement through the Council and its structures …" serves as the prevailing standard of conduct which legal practitioners must adhere to, and failure to do so constitutes misconduct.

[2] Section 40 (3) (a) of the LPA.

[3] The applicant can cancel or suspend the enrolment of a legal practitioner if he/she has "erroneously been enrolled" or has been enrolled on information that is subsequently proved to be false (Section 31 (1)(b)). In any other case it can only cancel or suspend enrolment if a high court orders that a practitioner's name be struck off the roll or that that person be suspended from practice (Section 31 (1)(a)). Such an order will be preceded by a recommendation by the relevant disciplinary committee that the Council apply to the High Court for a striking out, or an order suspending him/her from practice, or "any other appropriate relief" (Section 40 (3)(iv)) and obviously an application to justify that relief sought.

[4] *Botha v Law Society, Northern* Provinces 2000 (3) SA 44 (SCA) at para [10]; *Malan and Another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) at para [4].

powers over legal practitioners. These powers are essential for the maintenance of professional standards of conduct of all legal practices.[5]

[4] The applicant is the successor in title to the erstwhile Cape Law Society ("CLS") which served as the statutory regulatory body for attorneys practicing in the Eastern Cape at the time of the commission of the claimed offending conduct in May 2014.[6]

[5] The respondent is an enrolled attorney, notary public, and conveyancer with the applicant and of this court currently practicing as a director of Van Deventer & Van Deventer Inc., a legal practice in Sandton, Gauteng. He was admitted in all three capacities in 2008. It is common cause that except for the complained of conduct at the core of these proceedings, and one or two frivolous complaints against him over the years concerning issues that he avers were not within his control, he has an unblemished professional record.

[6] On 9 March 2016 the CLS received a complaint directed against him and an associate[7] at Greyvensteins Incorporated where he was engaged as a practitioner at the time.

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[5] *Law Society of the Cape of Good Hope v C* 1986 (1) 616 (AD) at 639 D.

[6] Section 116(1) of the LPA provides for pending proceedings under the old Attorney's Act, No. 53 of 1979, to be referred to the applicant to treat any unconcluded proceedings into alleged unprofessional or dishonest or unworthy conduct of a legal practitioner under the old act in the manner it presently deems appropriate.

[7] The associate, or a director as may be the more correct designation of him, is also a Mr. Labuschagne, although unrelated to the complainant. In the complainant's complaint submission form only the respondent and Mr. Labuschagne are mentioned (Greyvensteins Inc being indicated in the form as the "name of attorney against whom the complaint is lodged") but it is apparent from a judgment of this court in *Legal Practice Council v Craddock* (1967/2020) [2002] ZAECMKHC 48 (10 August 2022) ("*Craddock*") that a third attorney was asked to account by the applicant for her role played in the same saga. The applicant does not disclose in its founding affidavit what the fate was of the other two practitioners but relied on the *Craddock* judgment in its oral submissions before this court to distinguish the respondent's situation from Ms. Craddock's and to indicate the court's sentiments regarding her misconduct which the applicant was unable to prove it on a balance of probabilities. In my view it would have made sense to investigate the matter as a single complaint against several practitioners and to have brought one application for the court to enquire into the alleged misconduct (although uniquely personal to each) and to decide the fate of each professional one in relation to the other and against the measure of the misconduct. As it turned out, the splitting of the two matters (I will leave Mr. Labuschagne out of the equation) seems to have invoked speculation about the respondent's probable culpability in the Craddock proceedings to strike her from the roll based *inter alia* on the incorrect premise that Greyvensteins Inc. attended to the bond registration. The logic following that mistaken premise is that the respondent would

[7] Under the Rules of Attorneys' Profession,[8] the CLS would have followed the unique provisions provided for members under its disciplinary jurisdiction to address the respondent's claimed misconduct following receipt of an official complaint form which in the present case reads as follows under the rubric of "concise summary of (the complainant's) complaint":

> "Trustees of the ALC Property Trust is Cor Van Deventer, Director of Greyvensteins Inc. and transferring attorney and seller.
> Mrs J A Labuschagne is member of Lauren Nash Business Trust and purchaser of property. Lauren Nash is the wife of Cor Van Deventer.
> Tiaan Labuschagne trustee of Lauren Nash Business Trust and employer of Greyvensteins Inc.
> Mrs L [....] is legally married to complainant and married in community of property.
> Signature of complainant on consent form is false and was never signed.
> Cor Van Deventer, son of Mrs L [....] must have known that signatures were false as he was the beneficiary of the transaction."

[8] The complaint was accompanied by a suretyship which is the subject matter of the complaint.

[9] The complainant was one C [....] P [....] L [....].

[10] It is common cause that he was married to the respondent's mother but separated from her in June 2015. The marriage itself was volatile and an acrimonious divorce ensued.[9] The respondent thought it necessary to mention this feature of their

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have drafted the suretyship under scrutiny and would have overseen its execution by his mother and the complainant, in effect being in a position to manipulate the situation for his own personal interests.

[8] (GN 2 of 26 February 2016 : Rules of the Attorneys' Profession (Government Gazette No. 39740) which came into operation on 1 March 2016

[9] The court remarked upon these features in a judgment given in the complainant's divorce action that has certain relevance to these proceedings.

relationship as his perception was that the report of his claimed misconduct had been motivated by spite or was a plain vendetta by the complainant directed against him, his mother, or their family. The claim forming the subject matter of these proceedings was apparently instituted not long after his mother had commenced divorce proceedings against the complainant.

[11] As can be deduced from the summary of the complainant's complaint above the grievance against the respondent and his associate had as its primary concern the fact that his purported signature on a "consent form" (*sic*) signed on 2 May 2016 was false. This form alluded to by him was actually a formal suretyship agreement pursuant to which the complainant and his wife "married in community of property to each other" had on the face of it committed themselves as sureties to Standard Bank for the indebtedness of the Lauren Nash Business Trust. Her name and signature appear in the places in the deed opposite the designation of surety number 1 and his (and purported signatures) in the places reserved for surety number 2 to sign. Separate pages reflect each of them as consenting spouses as well since they were married to each other in community of property and would have been required by virtue of the provisions of section 15 (1) of the Matrimonial Property Act, No. 88 of 1984 ("MPA") to have consented to each other binding themselves as surety.

[12] The surety related to the purchase by the Lauren Nash Business Trust of property situated at [....] K [....] Street, North End ("the property"). The owner and seller of the property was the ALC Property Trust, of which entity the respondent was a trustee.

[13] The trustees of the purchasing trust were his mother, his then wife, and the respondent's associate aforesaid. Standard Bank granted a bond of R873 000.00 to finance the purchase consideration. The suretyship in question, executed on 2 May 2014, was required from his mother in her capacity as trustee for the mortgage loan. She was married in community of property to the complainant at the time and his signature would ostensibly have been required at the very least as a consenting spouse

although he is reflected as a co-surety in the deed. There is no question though that his wife was the principal applicant for financial assistance.

[14] Ms. Craddock - the other attorney disciplined by this court arising from the same alleged misconduct, employed the respondent's mother at the time. She acted as the transferring attorney.

[15] The bond registration was attended to by Bellingham Muller Attorneys.[10]

[16] The transaction was registered in 2014.

[17] The property, after its transfer to the Lauren Nash Business Trust, was "sectionalized" in March 2015 and the two sections marketed for sale in the same year. Both were sold and transferred by mid-2016 so that by the time the complaint was lodged the bond as well as the impugned suretyship had already been cancelled. Indeed, as the respondent pointed out in seeking to dispel the concern that the complainant had been prejudiced by the surety, there was only a short period of time when there was an outstanding bond for which the surety commitment had been a requirement. (As far as he was concerned this rendered the complaint "academic" and gave fuel to his perception that the complainant was on a mission to get at him and his family.)

[18] On the relevant page of the deed concerning him as surety number 2 a signature appears which the complainant disavowed as his own. Likewise, he alleged that he had not signed as the consenting spouse or in the other places appearing on the deed where the anticipated signatory in either capacity had been expected to sign or place his initials. The person alleged to have imitated his signature however signed on the deed in ten different places.

[10] Ostensibly no input was obtained from Standard Bank's attorneys regarding their involvement in the matter. They would likely have been responsible for drafting the suretyship as an adjunct to their formal conveyancing documents.

[19] The respondent signed the deed as witness number 1 in confirmation that the designated sureties - the complainant and his mother, had brought their signatures to bear on the deed of suretyship, and ostensibly also as one of two competent witnesses on the basis required by the provisions of section 15 (1) of the Matrimonial Property Act, No. 88 of 1984, to confirm the signatures of the "consenting spouses". The respondent's professional name stamp appears in four places below his full signature where these occur in the document as witness number 1. His initials appear in five other places in the deed. There is no question that this is his own signature and that he had acted in a professional capacity (evidenced by the affixing of his professional stamp) in putting it to paper and thereby verifying the signatures and promoting the validity of the deed and the consent of the spouses. In the deed itself a clause dealing with "confirmation of compliance with formalities" invites an expectation that Standard Bank or its agent overseeing the signing has explained the contents of the deed to signatures and its particular import including the right to get independent legal advice to make sure that they understand their commitment as surety. It further acknowledges that they have been "given an adequate opportunity to read and understand the terms and conditions" and "have been made aware of the condition … printed in bold", that the deed has been completed in all respects up to the confirmation clause and that their marital status has been recorded and that the consent of spouses, where applicable, has been completed and signed.

[20] On the same date Ms. Craddock ostensibly also brought her confirmatory signature to bear on the deed as is evidenced from her commissioner of oaths stamp as the second competent witness although in the separate proceedings concerning her she distanced herself from having signed the deed in such capacity. (It is relevant to mention her involvement since the applicant brought proceedings in this court to strike her name off the roll of legal practitioners as well arising from the selfsame debacle. In her instance two judges of a full court found on 10 August 2022 that the applicant had not canvassed sufficient facts to establish the offending conduct relied upon and dismissed the application.)

[21] It is notable that in the complaint which underlies the proceedings, the complainant went further than simply alleging that the signatures on the deed of suretyship purporting to be his were false. This is the gravamen of his complaint. By stating that the respondent "knew that they were false as he was the beneficiary of this transaction" he was obviously suggesting that the respondent had implicated himself at the level of a crime having been committed or facilitated and that he had done so for personal gain.

[22] The respondent indeed had a peculiar interest in the transaction in the sense that he was a trustee of the seller and his now ex-wife, the said Laura Nash, a trustee together with his mother of the purchasing trust. He also coincidentally revealed that the purpose of the sale had been to raise capital to purchase another property. As trustee of the ALC property trust he would have elected the conveyancing attorneys where his mother was employed, but in theory would however have had no control over who Standard Bank appointed to register the bond and procure whatever secondary securities were necessary.

[23] As for how it happened that he came to attest the signatures of the signatories in the deed, the respondent clarified that from 2011 to 2015 the complainant was the rental agent who attended to his and his ex-wife's as well as their various trusts' property interests. The portfolio consisted of approximately 60 rental properties. In the context of their busy engagement, he explained that documents were frequently signed by the complainant, his mother, and himself notably as a witness. In a letter to the CLS he indicated that this happened even after office hours. Implicit in this concession is that he sometimes signed documents in the absence of the complainant and his mother. In respect of his attestation of the purported signature of the complainant on the suretyship, he appeared to suggest that this might have been one of those occasions when he had perfunctorily signed a document presented to him by his mother on the assumption that her and her husband's signatures appearing in the deed were authentic.

[24] The falsity of the complainant's signature in the various places in the deed of suretyship formed the subject of a criminal investigation by the South African Police Services ("SAPS"). He evidently knew of the falsity of his signature on the deed since October 2015 but only formally complained of a forgery in March 2016.[11]

[25] As an aside it is evident from the judgment of this court (coincidentally put up as an annexure to the applicant's founding affidavit) in the divorce action between the complainant and his now ex-wife that there was, as the respondent suggested no love lost between them. His mother's relationship with the complainant was also described as a volatile one and she permanently left the matrimonial home on 15 June 2015 after which she issued the divorce action.

[26] An accusation that the respondent's mother might have been responsible for falsifying the complaint's signature on the deed of suretyship in question came up for discussion in the divorce trial. In examining her alleged financial misconduct that the complainant prayed should be considered to justify his claim for a forfeiture of benefits arising from the marriage, the court in its judgment related the following detail that is of relevance for present purposes:[12]

> "[60] Furthermore, during the subsistence of the marriage the plaintiff stood surety for a mortgage loan which her son entered into in order to purchase an immovable property. Again she did not acquire the consent of the defendant. The defendant contends that his signature was forged on the document and he alleges that the plaintiff forged the said signature. This the plaintiff denies and no evidence has been presented to me upon which I am able to make any finding in this regard. The immovable property concerned has since been sold and the mortgage loan repaid. The plaintiff's suretyship had no impact on the

[11] The criminal docket reference number suggests that that complaint too must have been lodged in March 2016.

[12] The respondent in an explanatory letter to the CLS had suggested that the complainant had used the facility of the complaint to advance his case in the divorce trial. As it turned out his insinuation that his wife had forged his signature came to naught.

> joint estate and there is no evidence of any conflict between the parties at the time as a result of the plaintiff's suretyship.
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> …
>
> [62] … Although the application of the plaintiff's signature as surety on a mortgage loan agreement whilst she was married in community of property may be categorized as misconduct there is no evidence of the impact which it may have had on the relationship between the parties at the time and it has no effect on the joint estate at all."

[27] In the present proceedings the applicant put up an affidavit made pursuant to the provisions of section 212 (4) (a) and (8) (a) of the Criminal Procedure Act, No 51. of 1977 by Warrant Officer Sinovuyo Ntlanyana, a "forensic questioned analyst" (handwriting expert) in the employ of the SAPS, wherein she confirms the probability that the purported signatures of the complainant on the suretyship do not belong to him.

[28] Despite Warrant Officer Ntlanyana' s opinion given in July 2016 of a probable forgery (which the respondent accepts but without any imputation to him of any knowledge that the signatures were forged or of any complicity in the reported crime), no prosecution has ever ensued.

[29] Even before the advent of the forensic report, the CLS, utilizing the machinery at its disposal at the time under the provisions of the now Repealed Attorneys Act, sought to investigate the complaint as a serious one of dishonesty no doubt premised - worst case scenario, on one of possible inferences that suggested itself from the facts, namely that that the respondent *knew* the purported signature of the complainant to be false.[13] (That scenario would have entailed that he was either complicit with the perpetrator of the crime of forgery and uttering and/or facilitated the commission of the crime.) The other possibility namely that he was nescient of the falsity however equally

[13] Evidently the CLS held the view that the complainant disclosed a *prima facie* case of dishonest conduct. It invited an explanation from the respondent (under "Part VII Disciplinary Proceedings" of the Rules for the Attorneys' Profession. It was not satisfied that an adequate answer to the complaint had been given and thereupon formulated a charge of unprofessional conduct for contravening Rule 14.3.14 and required the respondent to furnish it with his answer to the charge.

lent itself to a claim of "dishonesty" as he and Ms. Craddock by their signatures on the deed as witnesses number 1 and 2 gave out, at least as a primary supposition, that the complainant himself had signed as surety number 2 in their presence, whereas he obviously could not have.

[30] At the time the respondent was first asked to provide a response to the complaint in May 2016, he advised that he could neither confirm nor deny whether the complainant had signed the suretyship in his presence.[14] In the context of his regular dealings with the complainant and the numerous documents being signed by each of them or witnessed by him he claimed to have had no independent recollection of the document's signing.[15]

[31] Once the Police Services' forensic report had come to hand and the respondent was requested to advise whether it was his signature on the deed. He confirmed almost three weeks later that it "appeared" to be his signature.

[32] Evidently not satisfied that the respondent had given an adequate answer to the complaint, the CLS formally charged him with "unprofessional conduct" for contravening Rule 14.3.14,[16] claiming that he had brought the attorneys' profession into disrepute by signing a suretyship as a witness to a forged signature. The forgery then having been established as a fact, the implication again made clear from the way in which the charge had been formulated was that he either knew that the signatures on the deed were not

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[14] Of concern is that he and Ms. Craddock must have decided to employ a common strategy in answer to the complaint. This is evident from the fact that in both their initial responses, the same typographical error occurs in their almost identical statements that:

> "I regret that I cannot *confer* (sic) or deny whether Mr Labuschagne had or had not signed in my presence as I have no recollection of the said signature at that time".

See in this regard the court's summary in Craddock at paragraph [6]. Ms. Craddock coincidentally also suggested a "personal vendetta", but by the complaint against his wife to aggravate his claims in the divorce action.

[15] It is relevant to mention that he suggests to the CLA that he had requested the suretyship from the Securities Department from the Bank, but never revealed later on whether he subsequently received it or what his investigations in this regard indicated. He ought to have been curious enough to get to the bottom of the complaint given that he had in fact signed as a witness to the surety.

[16] The Conduct Rules of the Cape Law Society refer……

the complainant's (and thereby attested to them knowing of the falsity) or that he had in any event attested the complainant's signing as a witness in his absence.

[33] The respondent's answer to the charge was somewhat awkwardly articulated:

> "As previously stated, Mr N [....] L [....] was married to my mother and as a result we saw each other frequently. He attended to various rentals as my agent and documents were frequently signed after hours, I have confirmed that it is my signature as the one witness and the only inference that can be drawn is that he signed it in my presence. I have stated that I unfortunately cannot recall signature of this specific document as it was one of many documents signed by Mr Labuschagne and is something that I vehemently deny. As far as it is relevant, Mr Labuschagne hade it his mission to launch a personal attack on me as a result of the acrimonious divorce. Their divorce went on trial on 24, 25 and 26 November 2016 and the decision (which is expected any day now) will no doubt make Mr L [....]'s motives, as well as his credibility as a witness, very clear.
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> The bond (and suretyship) in question was cancelled almost a year ago and I sincerely hope this matter can now be laid to rest."

[34] On 13 February 2017 the CLS's disciplinary committee found that he had committed "unprofessional conduct" and had brought the attorney's profession into disrepute by signing the suretyship as a witness to a forged signature. It qualified its finding that he had done so either "knowingly", or in the absence of the signatory.

[35] The respondent was invited to address the CLS on the sanction to be imposed. He was placed on terms to do so by 27 March 2017 because he had not yet done. On 10 April 2017 the CLS directed that he advance reasons why a resolution should not be taken authorizing it to launch an application for a court-based sanction.

[36] This invoked a response the following day (and an apology "due to (his) hectic program). He repeated that he could not recall the signing of the surety but assured the CLS that he had had no inkling that the complainant's purported signatures had been forged. He asserted that he certainly would not have attested the complainant's signature if he had been aware that his signatures had been falsified in the deed.

[37] The complainant and his mother were involved in an acrimonious divorce and that the couple had "launched his complaint in an effort to advance his case in the divorce matters".[17]

[38] As for the impact of the transaction itself he reported that the need for the suretyship had fallen away since the bond had been fully settled, thus ameliorating any risk of harm to the complainant. He requested that a fine be considered as an appropriate penalty for his accepted negligence.

[39] Sadly he appeared to have missed the import of the alternate premise of the disciplinary committee's finding, which is that he had attested the complainant's signatures in the latter's absence which was also an obvious inference to be drawn from the fact that the complainant's purported signatures were not in fact made by him.

[40] On 15 January 2018 the CLS resolved to bring a strike off application. This course ultimately followed after finally inviting the respondent's final input and the applicant seeking legal advice.

[41] After the applicant had assumed control over the regulation of the professional conduct of legal practitioners under the ambit of the new LPA, a further delay of three years ensued before the legal advice was given effect to by the launch of these proceedings culminating in the present application in which the CLS successor in title

[17] Judgment in the divorce action was an attachment to this letter, put up by the respondent to bring home the supported malice and all motives of the complainant, leave aside the court's negative comments made in the judgment against the complainant's credibility.

sought an order striking the respondent from the roll of legal practitioners. It prayed in the alternative that the court impose a sanction that it deems appropriate.

[42] Despite the austere relief sought in the main, the applicant did very little by way of independent investigation to investigate how it happened that the complainant's signature was falsified or how and why the respondent and (ostensibly) Ms. Craddock's signature came to be on the deed as if they had attested to the complainant's signing of it. It might have been entirely innocent if, for example, the complainant had given his authority in a separate document for someone to have signed the suretyship on his behalf. (The respondent did not suggest this a possibility however, maintaining instead that he had no independent recollection of the document's signing.)[18]

[43] The applicant went no further than putting up the forensic report referred to above in proof of the allegation that the signatures on the deed could not have been the complainant's to justify as the more significant premise (going to the remedy of striking off) that the respondent had *dishonestly* represented that he had attested to the false signatures. It asserted in its founding affidavit that it was satisfied that the affidavit of Warrant Officer Ntlanyana "evidence(d) that (the complainant's signature) was forged" and reverted to the original supposition that "accordingly the respondent either knew of the forgery, or did not sign as a witness in the signatory's presence". On either score, according to the applicant, he was guilty of misconduct. The applicant appeared to equivocate, however, between the worst and the least of the offending conduct rather than guiding this court as to what aspect of the respondent's conduct exactly warranted the most serious censure of his name being struck off the roll of legal practitioners.

[44] Justification for its decision in appealing to this court to strike him off the roll of legal practitioners came down to this:

[18] Since he had advised the CLS that he had asked for the deed from the bank one would have expected some form of introspection by him as a reasonable professional who had allegedly duped or even more so once the forensic report confirmed the complainant's grievance that the signature on the consent form was indeed false.

> "The attorneys' profession places a high premium on the values of honesty, integrity, reliability and accountability. Attorneys can only be described as fit and proper persons to practice the law when they do more than pay mere lip service to these values, but bind and conduct themselves accordingly. The general public should have trust and believe that attorneys are trustworthy and of high moral character.
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> From the outset the respondent failed to give a satisfactory response and maintained that he could not recall the signing of the suretyship, despite admitting that it was his signature and that he signed as a witness. One would have expected, as an attorney, that the respondent would be able to, without hesitation, state that he would not have signed a document as a witness without the person whose signature he was witnessing being present, particularly in circumstances in which the document is of such significant importance."

[45] In heads of argument filed by Ms. Watt acting on the applicant's behalf she suggested that the respondent has committed fraud by misrepresenting that he had witnessed the complainant sign the suretyship in his presence whereas (because the latter's signatures were established to be false) this could never have been the case.

[46] It is apposite to mention that in *Craddock* the court criticized the applicant for not having done the least it could to have gotten to the heart of the matter once it had accepted that the complainant's signatures could only have been affixed on the deed through forgery, in establishing how she allegedly abused her position by attesting to the false signatures. (The same question obviously begs itself concerning the respondent's position). It expressed the view that the applicant could have sought to establish where the deed of suretyship emanated from and how it got to be presented to her for witnessing. (The respondent however seems to have conceded that his mother brought the document to him to sign.) The applicant apparently dismissed the source of the deed of suretyship as irrelevant in its replying affidavit in that matter. The court was unimpressed with its stance:

> "[27] … I fail to understand how it could be that the source of a document with a forged signature would be irrelevant. One would have thought that the source of any forged document is part of the factual matrix that would need to be disentangled in getting to the bottom of the forgery. To simply focus on the witness' signature in circumstances where forgery was clearly committed is an over simplification and an unfortunate lack of appetite to get to the bottom of how the fraud or forgery was committed. An investigation might possibly have helped to unmask the role played by the witness or witnesses thereto including the respondent if she had anything to do with it and their degree of participation. Most importantly, it would have helped to establish whether they were active participants in that crime through directly facilitating it or perhaps unwittingly facilitating it through for instance signing as witnesses when they did not witness the signing of that document."

[47] The respondent himself featured large in the court's speculation in *Craddock* of what might have happened:[19]

> "[28] The respondent (Ms Craddock) explains that the transactions which were relevant to the deed of suretyship were the transfer of erf [....], North End which she handled. It also appears from the relevant power of attorney to pass transfer that the transfer was from the ALC Property Trust and the trustee who signed for the trust is Cor van Deventer, Mrs L [....]'s son. The conveyancer who was attending to the transfer was the respondent. The respondent has explained that the simultaneous bond registration process was attended to by a conveyancer at Greyvensteins Incorporated.[20] That firm is where Cor and Liesl, his sister worked as attorneys or co-directors both of whom, according to the respondent are Mrs L [....]'s children. It is not clear if Cor was the conveyancer

[19] See footnote 4 above. Speculation could have been avoided if the applicant had investigated the matter as a combined complaint and invited the factual enquiry envisaged in paragraph 2 above in one single application to this court.
[20] It was accepted in the present proceedings that this is an incorrect premise.

> for that bond but his firm attended to the simultaneous bond registration. As bond registration conveyancers that firm would have created and printed the bond documents which might have included the deed of suretyship on the instructions of Standard Bank."

[48] The premise that Greyvensteins Inc attended the bond registration is incorrect, but by the same token the applicant could and ought to have ascertained how the deed of surety came to be in the hands of Ms. Craddock and the respondent as attesting witnesses respectively when they "attested" to his purported signatures. (In this instance the respondent appeared to concede but only in his answering affidavit filed in the present proceedings that his mother probably brought the document to him for signature.)[21]

[49] The court in *Craddock* also criticized the applicant for not carefully looking into the conveyancing files of the relevant practitioners and drawing a much clearer picture of the circumstances in which that deed of suretyship was signed and witnessed.[22] Evidently the input of the bond registering attorney was not obtained to explain how a document ancillary to the bond registration documents had left the offices of Bellingham Muller Attorneys who no doubt and according to clause 16 of the surety which I highlighted above required it as the bank's agent to seek the necessary confirmation of compliance from the principal surety and her spouse, the complainant. Conversely, if the respondent was going to be stepping into a colleagues' shoes and relieving that firm of their obligations to their client (Standard Bank) it would have been a particularly good place for the applicant to begin in their investigations. It remains unknown, for example, how the deed left their office, under what circumstances, who returned it and what did the return yield? Was the surety which the complainant availed to the CLS the one prepared by the bond registering attorney and more significantly, was it the one finally

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[21] That would have significantly lifted the lid off the mystery and laid bare the obvious, which is that the respondent's mother could have filled in the missing gaps to so many questions. I saw no indication that the applicant had interviewed the latter. However, by the same token, the respondent ought to have conducted his own investigation into the obvious abuse of his professional agency impliedly by his own mother.

[22] Paras 29 – 31 of the *Craddock* judgment.

presented to Standard Bank as the final executed deed? Where and under what circumstances the power of attorney to register the bond was signed and who witnessed it? Perhaps that document too accompanied the surety when the respondent attested to the signature on it. There must have been a good reason why Bellingham Muller released the documentation to the respondent's mother.

[50] It is also not clear to me that he took the steps that a professional person in his opinion would have when confronted with the complaint. To the contrary as I said above he seemed to miss the significance of his professional misconduct.

[51] The first and foremost step he should have taken would have been to get to the bottom of how his office could have been abused in all the circumstances. He did not take the complaint at face value, dismissing it instead as a nuisance. Even when he was advised of the outcome of the police investigation this did not inspire him to conduct any form of introspection.

[52] Another importance question which begs itself is, as was highlighted by the court in *Craddock*, is what investigations the bank itself undertook, if any, to investigate the significant breach of their security and the integrity of their documentation. Is the bank even aware of the complaint?

[53] It is apposite to mention the respondent's reply in these proceedings to the allegations of unprofessional conduct:

> "I deny that I failed to give a satisfactory response. I responded to the allegations honestly and factually as best I could. I categorically state that I was not aware that the signature was allegedly forged, however cannot remember that I witnessed the signature in the absence of the Complainant. I can categorically state that I had no knowledge that the suretyship contained a

> forged signature (if indeed the signature is forged).[23] Having regard to the close relationship with my mother (and previously the complainant as well), there was no reason for me to doubt that documents brought to me for witnessing by my mother were anything but genuine signatures. I submit that such an infraction does not deserve a striking from the roll, particularly if one has regard to the relationship that existed. I accordingly dispute that a striking off is appropriate."

[54] Whatever the applicant and the CLS before it had considered was the high water mark of the "offending conduct", Ms. Watt fairly conceded that the worst offence by the respondent's conduct that could be established from the evidence on a balance of probabilities was that he has attested to the complainant's signature purported in clear circumstances where he was absent. He had to be if once he accepts that the purported signature was not his own. She conceded that there was no reason to believe that he would have signed as a witness to the suretyship knowing that the complainant's signature was a forgery.

[55] Whilst I accept that the evidence does not establish dishonesty on his part the CLS finding of unprofessional conduct is certainly justified on the papers. Indeed the respondent has made peace with this although it was contended on his behalf by Mr. Manca who appeared for him that such misconduct is not serious enough to warrant the extreme penalty of striking off or even the sanction of a suspended sentence with conditions which the applicant raises for consideration by this court. Quite contrary to the view of the applicant that his unwitting attestation of a false signature on the deed remains a serious infraction with its own and negative features, the respondent contents that a reprimand is an appropriate sanction. …….

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[23] I should point out that the respondent begrudgingly accepted the "proof" of the forgery as set out in the forensic report in the absence of a confirmatory affidavit by Warrant Officer Ntlanyana and the lack of any opportunity to have countered her opinion. He also remarked upon the absence of any enquiry or opportunity under the auspices of the CLS' disciplinary processes to have had an opportunity to have disputed the evidence of a fraudulent signature or to cross examine witnesses though the CLS was not obliged at the time to hold a hearing. In a further affidavit filed in February 2022 this year he however confirmed having had the benefit of inspecting the police docket and that he did not wish to supplement his answering affidavit in this respect.

> "The conduct complained of, that the Respondent signed as a witness in the absence of the signatory, has then been established on a balance of probabilities. As stated in the minority judgment in the Craddock matter regarding such conduct "it is reflective of a legal practitioner willing to bend the rules and operate unethically in certain circumstances, based on the identity of the parties to transactions before her and courtesy of her own personal relationship with the role-players. This is unacceptable and worthy of censure."

[56] I disagree. A valid deed of suretyship is one that must be embodied in a written document signed by or on behalf of the surety.[24] A consent by a spouse also carries with it the unique requirement that it be attested by two competent witnesses.[25]

[57] Both ought to be signed in the signatory's presence because the very act of attesting to the signature is to provide evidentiary support in case there is a dispute about who signs and more significantly, to protect against forgery.

[58] A person who purports to serve as a witness to a legal document verifies that the signature on the document belongs to that signatory. By attesting thereto such a person recognizes that he may be called upon later to testify in court that the person who signed his name on the legal document did so in his/her presence.

[59] It may well be excusable in unique circumstances but not desirable for a person who recognizes the signature of the signatory to verify it after the fact and in the absence of seeing this party signing if he is familiar with that person's signature. If the surety has given someone the authority to sign in his place a witness will no doubt want to see and examine that authority and thereupon would vouch for the signature of the proxy instead.

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[24] Formalities in respect of contracts of suretyship. – No contracts of suretyship entered into after the commencement of this Act, shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of the surety: Provided that nothing in this section contained shall effect the liability of the signer of an aval under the laws relating to negotiable instruments.

[25] Section 15 (5) of the MPA.

[60] Ideally a witness to any agreement and here I speak of an ordinary citizen should also not have any personal interest in the document he signs in this capacity because a conflict may arise if he has to testify about it later on.

[61] It is more compelling when a notary public and conveyancer, on whose signature a high value and import is placed, signs as a witness to a legal document. In this instance the fact of the related sale transaction and relationship with the parties expected to sign should have been a red flag to a qualified legal practitioner to not get involved.[26]

[62] A notary public and trained conveyancer would also have been acutely aware of the hazards and opportunity of fraud if the basic pre-requisite was dispensed with for convenience in any situation.

[63] Indeed observed as was by the minority court in *Craddock*:

> "most probable inference on the evidence is that the respondent devised and implemented a scheme in terms of which his firm rewarded the estate agencies for the referral of conveyancing work. Taken as a whole, the evidence establishes on a clear balance of probabilities that the respondent **in fact** secured conveyancing work that was solicited by the agencies as a result of their marketing agreements and the understanding with regard to payment. This clearly constitutes the "soliciting" of professional work within the meaning of Rule 14.6.1.1. The respondent accordingly breached the said Rule and is guilty of unprofessional conduct in respect of both the charges leveled against him."

[26] Section 95 (1) of the Deeds Registries Act No. 47 of 1937 provides for the signing of any power of attorney executed under the act. It must be attested by two competent witnesses who will not qualify if he is to derive any benefit. This should have been the respondent's guide concerning the attestation of the related surety.

[64] A qualified conveyancer would know better than to perfunctorily attest to signatures on a document prepared by a colleague which are of specific import requiring explanation (such as in envisaged by clause 16 of the deed).

[65] A legal practitioner, especially one who is not attending to the registration of a notarial bond but finds himself attesting signatures to a deed of suretyship related to a power of attorney to pass transfer that a notarial bond also involves the interests of a spouse of a joint estate would in my view owe a duty coincidentally to be vigilant in explaining the significance of the surety commitment and what the parties would be binding themselves to. Such a practitioner would therefore insist on the parties being present before him/her unless the absent party has vouched for his authentic signature on some other basis or authorized another to sign the deed of suretyship on his behalf.

[66] There can hardly be any quibble that a party attesting a formal suretyship such as the present one makes a statement to the world that the signatories have signed the deed in his presence as a primary supposition. That is the whole purpose of attesting a formal signature and certainly one of a notary public's primary responsibilities. In this instance the fact that the signatures in the complainant's case were found to have been forged (it matters not for present purposes by whom) exposed the fiction that he had in this case properly attested to the complainant's signature wherein, lies the embarrassment to the legal profession. The very professional who is expected to protect against the forgery of legal documents has unwittingly himself facilitated it.

[67] The respondent appears to have missed the significance of this, accusing the complainant of a vendetta, but the forgery was evidently as real as his verification of the false signatures. It is a worrying concern, as was emphasized in *Craddock*, that it remains a mystery how it happened that the signatures were forged but the most embarrassing consequence of it all is that the respondent's purported attestation of the deed was exposed as a lie. Instead of trying to explain that anomaly (or to investigate it as a prudent legal practitioner would to understand how his signature had come to be abused) the respondent was more focused on accusing the complainant of a spiteful

motive. Whilst there may be merit in the respondent's suggestion that the complaint was strategically timed and possibly used to advance the complainant's case in the divorce action, the respondent certainly owed an it to Standard Bank and to the applicant to investigate how the wool could have been pooled over his eyes. There may well be an innocent explanation for it but I believe that the applicant was justified in complaining of a lack of an adequate answer to the enormity of the accusation once it was established that the complainant's signatures on the deed were a falsity. Whilst there may ultimately have been no harm to the bank, or the complainant, it is in my view incorrect to answer that the complaint was "academic". More was required of the respondent to offend the profession rather than his own narrow interests. It is unfortunate that he believes that his infraction does not deserve a striking off because of his relationship wit his mother and prior close working relationship with the complainant, whereas it is exactly because of these relationships that he should not have brough forth his professional stamp and compromised his office by casually and perfunctorily attesting signatures in a legal document that he should have steered well clear of.

[68] Even through the surety had run its course by then, it was the known fact that the respondent had unwittingly (negligently as he professed) verified a fake signature that should have prompted him to act. Righteous indignation should have been a more appropriate reaction. Once the forgery was established than jumping on the blame wagon and blindly insinuating that the complainant was acting out of spite.

[69] When weighed against the expected conduct of an attorney, notary public and conveyancer, in all the circumstances the respondent's conduct, far from inconsequential as Mr. Manca suggested, comes up severely wanting and demonstrates in my view that he is not a fit and proper person to be an attorney.

[70] That is however not the end of the matter. The applicant conceded that his professional misconduct does not warrant that he be struck from the roll. Indeed if a fear existed that he should not be unleased on an unsuspecting public the applicant would have brough an application to interdict him from practicing pending the outcome of the

present application and would certainly have acted with more alacrity to seek the court's intervention to deal with the respondent's misconduct which it seems to have hoped to establish on a more severe scale of blatantly dishonest conduct.

[71] It is not necessary for this court to find that the respondent's unprofessional conduct renders him unfit to practice in order to impose the sanction of suspension from practice.[27]

[72] A suspension on the basis suggested by the A Division with conditions aimed at the respondent's reform is more appropriate. Whilst his misconduct is certainly serious enough to warrant a more severe penalty than a reprimand, the drastic steps striking off would not be justified. Such a sanction (as opposed to a striking off) would be consistent with what the minority court found in Craddock on the assumption that the evidence established on a balance of probabilities in its view that Ms. Craddock had lent her signature to the deed to vouch for what was in fact a fake signature.[28]

[73] The court was in that instance motivated by its view that Ms. Craddock was not quite forthcoming in admitting her role played in the unfortunate saga.

[74] It is not correct as Mr. Manca suggests that the respondent has demonstrated an ability to reform and has done so in the part eight years since the offending conduct was committed. To the contrary, he has never acknowledged any misconduct although a careful appraisal of the expectation of a legal practitioner in his revealed to him that it was not about blame but vindicating the honour of the profession.

[75] I am surprised that he could not have bothered to find out how it came to be that he was unwittingly misled.

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[27] ……case reference.
[28] Paragraphs [70] and [71] of the judgment.

[76] The applicant is tasked with maintaining appropriate standards of professional practice and ethical conduct of all legal practitioners, and with promoting and protecting the public interest thereby. It would be remiss of it if it did not act to vindicate the complaint against the respondent and or by letting his conduct slide as a trivial negligent slip. It therefore cannot be faulted for having sought the intervention of this court even if it delayed substantially in bringing the application. Therefore although the respondent tendered party and party costs the applicant was duty bound in my view to carry out its statutory obligation to bring these proceedings and should be properly indemnified in respect of the costs which it has incurred.

[77] I issue the following order:

1. The respondent's admitted conduct in attesting the complainant's signature as co-surety and consenting spouse on the impugned deed of suretyship in his absence constitutes misconduct within the meaning envisaged in the Legal Practice Act, No. 28 of 2014.
2. The said misconduct warrants a sanction of suspension from practice for a period of one year, provided that the sanction hereby imposed is suspended for a period of two years on condition that the respondent is not found guilty of misconduct committed during the period of suspension.
3. The respondent is liable for the costs of these proceeding on the scale of attorney and client.

B HARTLE
JUDGE OF THE HIGH COURT

I AGREE,

N GQAMANA
JUDGE OF THE HIGH COURT

DATE OF HEARING: 3 November 2022
DATE OF JUDGMENT: 29 November 2022

APPEARANCES:

For the applicant: Ms. K Watt instructed by Wheeldon Rushmere & Cole Inc. Makhanda (ref. Mr. Brody)
For the respondent: Mr. B J Manca SC & Mrs. T Zietsman instructed by Anneke Whelan Attorneys c/o Whitesides Attorneys, Makhanda (ref. Mr. Nunn).