IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

Date: 2008-05-20

UNREPORTABLE

Case Number: 19471/2003

In the application of:

TERENCE EDWARD DALE MATTHEWS Applicant

JUDGMENT

SOUTHWOOD J

[1] The applicant, Terence Edward Dale Matthews, applies in terms of section 15(3) of the Attorneys Act, 53 of 1979 ('the Act') for his re-admission as an attorney, notary and conveyancer. In terms of section 15(3) of the Act a court may, on application made in accordance with the Act, re-admit and re-enrol any person who was previously admitted and enrolled as an attorney and has been struck off the roll *inter alia* if such person, in the discretion of the court, is a fit and proper person to be so re-admitted and re-enrolled.

[2] The applicant was admitted as an attorney on 23 June 1964, as a conveyancer on 8 November 1965 and as a notary public on 4 December 1973. The applicant was struck off the roll of attorneys, notaries and conveyancers on the application of the Law Society, Transvaal (now the Law Society of the Northern Provinces ('the Law Society')) on 2 December 1988. The judgment is reported as ***Law Society, Transvaal v Matthews*** **1989 (4) SA 389 (T)** and for many years has been a leading case dealing with attorneys' misconduct and in particular an attorney's failure to keep proper books of account and safeguard trust funds.

[3] Early in 1989 attorney Frans Slabbert approached the applicant with a view to offer him employment and they agreed that Slabbert would seek the Law Society's consent in terms of section 83(5) of the Act to Slabbert employing the applicant. After an unsuccessful application to the Law Society in February 1989 a subsequent application in September 1989 was successful and on 15 September 1989 the Law Society granted Slabbert permission in terms of section 83(5) of the Act to employ the applicant with immediate effect subject to the following conditions:

> '1. That Mr T.E.D. Matthews should be employed in the same office as yourself under your direct personal

supervision;

2. That no signing powers be given to Mr Matthews on any of the trust banking accounts conducted by your firm;

3. That the Council reserves the right to review this decision at any given stage.

4. That the consent given does not in any way imply that the Council will consider an application by Mr Matthews for his re-admission as an attorney favourable.'

[4] The applicant commenced working for Slabbert shortly afterwards. His work consisted of a variety of conveyancing matters and drafting of documents, supervising secretaries and checking deeds for lodgement and matrimonial matters and administration of estates.

[5] Early in 1993 attorney Jan Coenraad Nelson Borman acquired Slabbert's practice with effect from 1 February 1993. Shortly afterwards Borman successfully applied to the Law Society for its consent in terms of section 83(5) of the Act for him to employ the applicant. The Law Society granted its consent subject to the conditions already in force. The applicant commenced working for Borman doing the same work as he did for Slabbert. The applicant is still employed by Borman and intends to continue working for him until the age of 75.

[6] In 2003 the applicant decided to launch an application for his re-admission as an attorney, notary and conveyancer. On 14 July 2003 he served his notice of motion and supporting affidavit on the Law Society. The Law Society did not give notice of its intention to oppose the application but invited the applicant to attend a meeting with the Council of the Law Society on 4 August 2003. The purpose of the meeting was to give the members of the Council an opportunity to ask the applicant questions to clarify aspects of the application. During the meeting the applicant was asked, with reference to the ***Aarons Case (Ex parte Aarons (Law Society Transvaal, Intervening*) 1985 (3) SA 286 (T))** how he would categorise the defect in his character or personality and he replied –

> 'With respect, Mr Bobroff, I do not think I had any defects of character. I think it was an error in judgment and perhaps a wrong attitude, but I supported my clients beyond the realms of duty, but I do not think that I have ever had any defects of character in the terms referred to in the ***Aarons*** case.'

[7] On receiving that answer the member, Mr Bobroff, went to considerable trouble to explain to the applicant what he was required to show in his application: i.e. a genuine, complete and permanent reformation on his part, that the defect of character or attitude which

led to his being judged not fit and proper, no longer exists and that it is fundamental to this enquiry to determine what this particular defect of character or attitude was and he emphasised the word 'before' one can begin to establish whether an applicant has reformed in respect thereof. Mr Bobroff then asked the applicant to identify the defective character or attitude with regard to each transgression which led to his being struck off. He asked the applicant to deal first with the placing of clients in bad investments. The applicant gave the following answer:

> 'Mr President, on reflection the incidents occurred in the years 1982 and 1983 which is 20 years ago. I was a lot younger then, I was just 40, 41. On reflection I would define myself as having been over-ambitious or too ambitious at that time, that perhaps my drive to build myself up within the practice bordered on being overzealous. I would not call it a defect of character, perhaps I overdid it in the sense that I misinterpreted the agreement in favour of my client instead of, where I should have had a doubt and referred the matter to my partners for their interpretation of the agreements. These clients were very important clients to the firm, possibly the biggest sources of income to the firm. My status within the firm then became very elevated, very suddenly, as a result of working for these clients. I became the highest fee earner in the firm in a short while. I became, although I was young, I became a senior partner from a profit, they made me senior partner from a profit sharing point of view. There were 12 partners and there were six senior partners and I was elevated to that status. So there was this drive to perform and in

> endeavouring to achieve that, I possibly was not as cautious, as circumspect and as prudent as I might have been, as I am now and as I should have been at the time.'

At the end of the meeting the Council decided that the applicant should amplify his papers as he had not addressed all the relevant issues. The Council pointed out that one of his problems was his tendency to blame others for his misconduct.

[8] On 23 May 2005 the applicant filed a supplementary affidavit to deal with the shortcomings in the application. This affidavit led to a second meeting with the Council of the Law Society on 5 August 2005. During the meeting the applicant was again asked why he had put his interests above those of his firm and he answered:

> 'I have always accepted that and I still accept that I allowed myself to be manipulated by this client to the extent that I put the interests of the client above the interests of my partners'

On receiving this reply the Chairman carefully pointed out to the applicant that he must deal with the findings of the court to show that he has overcome the character defects which the court found existed.

In short, he must follow the approach outlined in the ***Aarons*** judgment. The Council pertinently drew his attention to previous answers he had given and warned the applicant that if he did not deal properly with the problems he will not be re-admitted. The Council decided that the affidavits did not make out the case outlined by the ***Aarons*** judgment and pertinently directed his attention to the necessity of dealing with every finding of impropriety made by the court.

[9] On 23 October 2007 the applicant filed a further supplementary affidavit in an attempt to deal with the shortcomings in his application. This led to another meeting with the Council of the Law Society on 4 February 2008 at which the applicant was advised that the Council had resolved that the application could proceed and that the Law Society would not oppose the application. No reasons for this decision were given and the court has not been advised what caused the Council to take the decision.

[10] To re-admit the applicant the court must be satisfied that there has been a genuine, complete and permanent reformation on his part; that the defect of character or attitude which led to his being judged not fit and proper no longer exists; and that, if he is re-admitted, he will in future conduct himself as an honourable member of the profession and

will be someone who can be trusted to carry out the duties of an attorney in a satisfactory way as far as members of the public are concerned – see ***Law Society, Transvaal v Behrman*** **1981 (4) SA 538 (AD)** at 557B-C. In considering whether this has been established the court will have regard to –

> '… the nature and degree of the conduct which occasioned applicant's removal from the roll, to the explanation, if any, afforded by him for such conduct which might, *inter alia*, mitigate or even perhaps aggravate the heinousness of his offence, to his action in regard to an enquiry into his conduct and proceedings consequent thereon to secure his removal, to the lapse of time between his removal and his application for reinstatement, to his activities subsequent to removal, to the expression of contrition by him and its genuineness, and to his efforts at repairing the harm which his conduct may have occasioned to others'.

See ***Law Society, Transvaal v Behrman supra*** at 557D-F; ***Kudo v Cape Law Society*** **1972 (4) SA 342 (C)** at 345H-346A; ***Ex parte Aarons (Law Society, Transvaal Intervening)*** **1985 (3) SA 286 (T)** at 291B-F. In determining whether there has been a genuine, complete and permanent reformation on the applicant's part, which involves an enquiry as to whether the defect of character or attitude which led to the applicant being adjudged not fit and proper no longer exists, a

fundamental question must be answered: i.e.

> '… to determine what particular defect of character or attitude was before one can begin to establish whether the applicant has reformed in respect thereof. It is equally important, I believe, to enquire whether the applicant himself properly and correctly identifies and appreciates the defect of character of attitude involved. Unless there is such proper and correct appreciation by the applicant, it is difficult to see how the defect can be corrected or cured or eradicated and how there can be true reformation which is reliable and lasting'. See ***Aarons*** case at 294G-I.

[11] The judgment in ***Law Society, Transvaal v Matthews*** **1989 (4) SA 389 (T)** was damning. Not only did the court comprehensively deal with the transgressions of the Act and rules but its findings required in a number of instances that the applicant's credibility be assessed. In a number of important respects the applicant was found wanting. It is therefore necessary to assess what the court found and why. (All references are to the judgment in the ***Matthews*** case).

[12] The case against the applicant was mainly, though not exclusively, concerned with the applicant's dealings with two companies CHM Investments (Pty) Ltd ('CHM') and Bocardi Investments (Pty) Ltd

('Bocardi') and two directors and shareholders in the companies, Messrs F.D. Niland and M.J. Christie. At the time the applicant was a partner in the attorneys firm Van Hulsteyn, Duthie & Saner ('Van Hulsteyns'), Johannesburg and he practised mainly as a conveyancer. CHM and Bocardi developed old and dilapidated buildings by modernising and renovating them and then sold sectional title units in the buildings. CHM was developing seven buildings and Bocardi two. The sectional title units were sold on deed of sale and the purchasers usually paid the deposits and sometimes instalments to Van Hulsteyns. The applicant controlled the receipt of these payments and was the only partner involved in the management of the daily affairs and conveyancing matters of CHM and Bocardi. In April 1985 the applicant made the following statement to the Law Society:

> 'From 1980 to 1982 Bocardi Investments (Pty) Ltd (Bocardi) and CHM Investments (Pty) Ltd (CHM) had been engaged in property development. The owners of the two companies were Niland and Christie. They acquired rights to old or run-down buildings, modernised and refurbished them, and sold off proposed sectional title units. Their success was phenomenal and it was by no means out of the ordinary for them to sell all the units in a proposed development within a fortnight of acquiring the right to dispose of them. Profits were enormous, and flushed with early success, they acquired the rights to other buildings for the same purpose. With the benefit of hindsight it

is clear to me that they paid scant regard to cash flow and it is my belief that they were using deposits from other sales to finance new developments. Although Bocardi and CHM would have had, but for the use of the deposits, cash flow problems, they were riding the crest of the property boom where investments of R1 million were being doubled in as many weeks and they had nothing to worry them. The flow of deposit money to them was healthy as was their statement of assets and liabilities …

In October 1983 there was a dramatic change in the affairs of CHM and Bocardi, almost entirely brought about by external factors. The property market slumped, and interest rates rose. Both companies had mortgage bonds to repay; against the interest they had to pay on their bonds, they had interest receipts from purchasers of units. Many of the units had been sold in terms of contracts under the Alienation of Land Act (*sic*) and by statutory instrument interest was pegged considerably lower than the bond interest the companies had to repay. Furthermore, when the mortgagees were asked to release units from the master bond they demanded (as is the practice) more than the amount represented by that unit's participation in such bond. The two companies found themselves in serious cash flow difficulties. It was in about October 1993 that I realised both companies were in a perilous state. The Johannesburg City Council, in anticipation of the Sectional Titles Amendment Act 77of 1983, had frozen all applications for approval of schemes lodged after approximately August 1983 until the proposed bill became law which it did on 1 October 1983. I could see that the new amending Act would result in very substantial delays in the approval of schemes, which in turn meant that the flow of

essential funds to the two companies would cease. I became very alarmed that purchasers would be prejudiced, because without cash flow I could visualise the collapse of CHM and Bocardi if any action were taken against either. Christie told me he was working day and night to find the purchaser of the companies capable of injecting a large cash sum into them.'

[13] The applicant as attorney and conveyancer would have earned a large amount in professional fees. The applicant also stood to acquire shares in both CHM and Bocardi and related companies. His understanding with the companies' shareholders was that he would receive 20 % of the shares and he expected to receive 20 % of the profits. It was important for the applicant that the two companies made a profit and continued to operate as he would receive part of the profit. The applicant would therefore receive legal fees as well as profits from the sale of the sectional title unit (392E-393A).

[14] The court found that the applicant –

(1) did not keep proper book account relating to the transactions entered into by CHM and Bocardi (398E-G). The applicant did not follow the usual procedure adopted by Van Hulsteyns. CHM and Bocardi received large amounts of money deposited with the firm by purchasers of units. The companies needed the money to carry out renovations and the applicant acted as

banker, financier and manager of his clients (398B-D). All the money paid to Van Hulsteyns was simply paid into CHM's general account (398A-B). The applicant was fully aware of the cash flow problem and he played a key role in paying the money into the general pool without proper regard for the duty of an attorney regarding the rights of purchasers and the prescribed bookkeeping procedures (398E-G);

(2) introduced into the general account of CHM R1,7 million of clients unconnected with the affairs of CHM thereby creating the impression that there were more funds in the account than there were in fact (398G-H). According to the applicant these were loans. The court found this answer unsatisfactory because there were no documents or records to support the answer (399I-J). The court did not find that the applicant misappropriated the funds (400C-D) but found that the records were totally chaotic and totally incompatible with the profession's requirements (400D). Nevertheless the court found that this was done by the applicant deliberately to finance his chosen clients at the expense of others. The court found that the applicant's conduct indicated a reckless and calculated disregard for the interests of clients when this money was paid into CHM's account. The applicant's motive was simply to

ensure that CHM had sufficient funds to meet its obligations and this was disgraceful and totally unjustifiable (400D-G);

(3) misappropriated trust funds by paying deposits paid into Van Hulsteyns trust account into CHM's general account. (There were approximately 700 deeds of sale in terms of which the purchasers were obliged to pay the deposits to Van Hulsteyns) (400G-I). The court rejected the applicant's intention that he was entitled to do this. The court found that the firm either held the funds in trust or as stakeholder and that none of the applicant's contentions could be accepted (404B-D);

(4) with regard to the R1,7 million paid into CHM's general account, did not select deposits to be paid into the general account of CHM and that his evidence to that effect was false (404I-405B) and that the applicant had paid into CHM's account deposits paid by second and third purchasers, people with whom CHM did not have a contractual relationship: i.e. that the applicant had misappropriated such funds (405C-F). The court made the following finding:

'The result of the aforegoing is the following:

(1) The respondent's contention that he considered

the deeds of sale and only paid out to CHM those deposits which he regarded as not being trust is false and the defence thus raised is deliberately false.

(2) The respondent misappropriated trust monies and monies held by Van Hulsteyns as a stakeholder for the benefit of clients in whose business he had a substantial financial interest.

(3) The respondent knew that what he was doing was wrong but has sought to escape liability by falsely trying to cover up the true position.

(4) What occurred took place over a lengthy period and the sums of money involved were vast.

(5) The respondent's bookkeeping system was totally inadequate and, what is more, he must have known it.

(6) To appropriate money out of trust or out of a stakeholding as occurred here is a very serious matter, especially as this occurred without the knowledge or consent of the depositors. The reported decisions down the years have emphasised the sanctity of trust money and that the public is entitled to regard it as such. Money taken out of trust and paid into the account of CHM became the money of the latter, a company whose stability was, to the knowledge of the respondent,

at least from October 1993, perilous. The purchasers, instead of having their money safe either as trust money or as money hold by a stakeholder, were reduced to the ranks of concurrent creditors through no fault of their own but solely through the machinations of the respondent.

(7) These activities have resulted in depositors, in the sum of R380 386, having lost the sanctity of the trust account or the security of a stakeholding to their detriment, to the detriment of the profession and to the detriment of the respondent's erstwhile partners who have undertaken to reimburse such depositors.' (405B-406D);

(5) the applicant allowed the Van Hulsteyns trust account to be used by his clients to lend credibility to the deed of sale. The applicant knew that the provision in the deed of sale stating that monies were to be paid into trust had a reassuring effect on members of the public and that it could mislead them (406E-G);

(6) destroyed the façade of respectability created by the provision in the deed of sale by paying the deposits to CHM (407C-E);

(7) breached the undertaking he gave on behalf of Van Hulsteyns to the Johannesburg Municipal Pension Fund (JMPF): instead

of retaining R952 000 in trust as he undertook to do, he continued to pay over the money received by Van Hulsteyns trust account into the general account of CHM (408G-409G). The court's conclusion –

> 'That an attorney of this Court deliberately breached an undertaking given seriously and deliberately to another party which undertaking the respondent knew was a most material provision in a loan of nearly R1 million. And why? – to assist a client in which he had an interest and whose position by October 1983, to the respondent's knowledge, was perilous.' (409H);

(8) conducted himself in relation to the warranty in a deplorable and intolerable manner –

> 'There is another aspect of this warranty: it was that the respondent, representing Van Hulsteyns, would control the monies and keep a close check on the inflow and outflow of that money. The undertaking was not only breached as discussed above. It is clear from what has already been found that the books of account in relation to the aforegoing were such that is was impossible to keep such a check – and the respondent also knew that he could not ascertain what he was taking from the monies held in trust for the benefit of the general account of CHM. This conduct, and the breach of contract, if committed by a businessman, would be most reprehensible but, by an officer of this Court, it is

deplorable and intolerable.

What makes this all the more serious is:

(1) the respondent did not seek his partners' consent to the giving of the undertaking or informed them thereof until the bubble burst and he was forced to do so; and

(2) he breached the terms thereof with the result that his partners personally suffered financial loss; yet he still did not tell them. The loss has been assessed at R650 000.

Partnership is a contract *uberrimae fidei*: 'the relationship between partners is very much the same as that between brothers.' See ***Wegner v Surgeson*** **1910 TPD 571** at 579. The respondent's failure to observe this *uberrima fides* and his breach of trust is self-evident and unbecoming to an attorney. In fact neither the sum of R952 000, nor any sum approaching that figure, was accumulated in the trust account during the nine month period' (409I-410D);

(9) arranged loans for other clients to CHM to enable CHM to repay its loan or interest to the JMPF when he knew the financial state of CHM was perilous and that it could not pay the R952 000 in the near future. The applicant and his clients were desperate to save CHM. Not only his interests in CHM were in jeopardy but

he and his partners would be liable under the guarantee. It was essential to get money to possibly extend the date for repayment. To do this the applicant caused some of his clients to lend money to CHM and Bocardi. The applicant used money held on behalf of clients and obtained his clients' permission after paying the money to the company and did not warn his clients that the loans were risky if not bad investments (410H-I);

(10) in the case of Beldeen Investments (Pty) Ltd, whose sole shareholder and director was an elderly lady client of Van Hulsteyns, Mrs Skillen, on 29 December 1983 paid R150 000 to CHM which on the same day paid that amount to JMPF. The applicant obtained a document recording the loan only on 21 May 1984. The court commented -

'I refer to the document – the only one recording the loan:

(1) There was no acknowledgment of debt by any debtor and no provision for security.

(2) How could an attorney negotiate a loan to be repayable "within a reasonable period of approximately three months" – what does this mean?

(3) When the document was signed on 21 May 1984 a

period of four and three quarter months had already elapsed. The loan had not been repaid despite the lapse of "approximately three months". Nothing is said of a further extension of the loan. There is no evidence that any interest at 18 % was paid in advance or at all. Exactly what was the respondent doing when Mrs Skillen signed that document at his behest. Whose interest was he protecting? Certainly not Mrs Skillen's or Beldeens.

(4) How could an attorney, with the knowledge that the respondent had of the affairs of CHM, record, let alone arrange for an unsecured loan for a company in a perilous position – and which had insufficient funds to pay the pension fund R952 000?

(5) Yet despite all this the respondent told Mrs Skillen that she had nothing to worry about concerning the loan to CHM. He assured her it was a valid and sound investment.

At a Law Society hearing the following was said (record p765):

> "That you had done so – that Mr Marock was no longer buying this company, it had been bought by another company who was responsible for the loan and that, in my view, it was nothing for her to worry about, she would get her money back and she would also get interest on her money.

> But you did not ask her approval. You merely informed her? – Yes. She had given me the authority to invest the money on an interest-earning basis and I considered that this was a valid and sound investment."

In our view this statement was a deliberate falsehood by the respondent to obtain money, or, probably more correctly, to justify his having obtained money, for CHM and indirectly for his own interest. This statement simply could not be true.' (413B-H). The court commented further –

> 'In regard to the aforegoing what appears in the record at pp759 *et sec* showed the respondent in a very bad light and behaving in a most unethical manner. The true position appears to be, and we so hold, that, in his desperate plight to obtain money for CHM at the end of December 1983, the respondent, acting under his authority to invest Beldeens' money, simply withdrew the sum of R150 000 and paid it to the pension fund on behalf of CHM. He sought a debtor and juggled, and I use that word as it was used in argument before us – between IGM and CHM. In the course of so doing he deliberately misrepresented and in fact told untruths to Mrs Skillen to obtain her consent to what he had done and was doing. His manipulations appear from the document signed on 21 May 1984 where he manipulated not only the debtors but the date of repayment.
>
> When he signed his answering affidavit over three years later on 1 July 1987 he stated:

> "After the agreement with IGM Properties (Pty) Ltd for the acquisition of the shares in CHM was cancelled I regarded CHM as Beldeens' debtor. On the information presently available to me, IGM continued regarding itself as Beldeens' debtor … Despite having discussed the substitution by telephone with Mrs Skillen I may consequently have been wrong about the substitution. I must point out that in Beldeens' written authority dated 21 May 1984, I referred to Mrs Skillen's agreement to the substitution as having taken place during January 1984. The authority actually signed by her was prepared at a stage when I was about to leave the firm and upon further reflection my recollection is that discussions with her took place during February 1984. As I recall, IGM fell out as a purchaser only during February 1984".

This attempt by the respondent to rationalise the position with hindsight reinforces the conclusion above, i.e. of the manipulation. If the substitution of debtors took place in February, and not January 1984 this is all the worse for the respondent – at that stage the pension fund had called up the loan, the bubble had burst and CHM was financially in ruins and the respondent knew it. Yet he recommended the investment with CHM to an elderly woman without any form of security. These facts demonstrate that the respondent acted in a thoroughly dishonourable manner unbecoming to an attorney or officer of this court.

Before the Law Society and before this Court the respondent was so enmeshed in a web of attempting to justify his unjustifiable conduct that he resorted – to use

the words of counsel for the Law Society – to telling lies.

The authorities already quoted on what is expected of an attorney are clear. The aforegoing analysis, measured against those standards, speaks for itself. The evidence establishes that the respondent cast aside the role and duties of an attorney and descended to a level of a disreputable money dealer. An aggravating feature is the fact that he was dishonest as set out above. On this charge there is no mitigating factor whatsoever.' (414F-415E);

(11) contravened Rule 77 when he invested his clients' funds (there were four instances) and did not tell the truth about being ignorant of the Rule (415E-416F and 416I-417D);

(12) in the case of a purchaser, Mrs Harris, deliberately disregarded the arrangement with her attorney that her deposit of R19 000 be held in trust and invested on her behalf pending transfer and paid the deposit to CHM (417B-E) but did not find that his explanation for so doing was purjury (418F-H). However, the court found that this was another example of how the applicant's bias to CHM and his interest therein reduced his professional status to a subservient role (418I);

(13) had not been the tool of Niland and Christie and that there was

no evidence to suggest that Niland exercised influence over him and that he was a weak person in Niland's hands. This issue had not been raised in the voluminous affidavits or the hearing before the Law Society. The court concluded that the applicant acted willingly and of his own volition (418J-419B).

[15] The court found that the respondent's transgressions covered a wide spectrum of unprofessional activities over a lengthy period of time and involved large sums of money: that each transgression was serious and that the applicant's untruthfulness was an aggravating factor (420B-D).

[16] The applicant has not dealt with all these findings as required by the ***Aarons*** case and as pertinently advised by the Council of the Law Society at two meetings. The first two affidavits demonstrate a complete misunderstanding of what was required of him and rightly were not relied upon by the applicant's counsel. Nevertheless it is striking how the applicant attempted to ascribe his transgressions to the fact that he was young and inexperienced. He was then an attorney, notary and conveyancer, 43 years old, and had been working in a well-established and well-regarded firm for 24 years. The third affidavit does not deal with the transgressions in any detail and does not show that the applicant has insight into the personal defect which

caused him to disregard his training, education and background, and act so unprofessionally and dishonestly over a fairly extended period. What is disturbing is the theme in the third affidavit that the applicant allowed himself to be persuaded to do the various things that he did as if he was the unwilling tool of someone else. The court found that this was not so and that the applicant acted of his own volition, clearly because he perceived it to be in his best interest to do so. In my view the applicant has not shown that he fully appreciates his personal shortcomings and despite the long period which has elapsed since he was struck off I do not consider that he has shown that he has genuinely, completely and pertinently reformed. The applicant has not even attempted to deal with the court's findings that he was deliberately untruthful in attempting to explain to the Council and the court what he had done.

[17] In my view the other evidence cannot and does not resolve this difficulty. Both Mr Slabbert and Mr Borman are well-disposed to the applicant and have been impressed by the quality of his work, his ability to get on well with clients and staff and his apparent remorse. However neither has shown that he studied the applicant's conduct as this court must do to determine whether he has genuinely and pertinently and completely reformed. It is striking that the applicant has not referred to the fact that he has worked with success and without

mishap in circumstances similar to those prevailing at Van Hulsteyns in 1982-1984.

[18] The affidavits of Dr Verster and Ms Du Toit do not assist the applicant. In my view they deal with medical rather than legal matters and they have no understanding of what is required to be shown in an application of this nature.

[19] The application is refused.

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B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

I agree

_____

C.J. DAVEL
ACTING JUDGE OF THE HIGH COURT

CASE NO: 19471/2003

HEARD ON: 12 May 2008

FOR THE APPLICANT: ADV. D.P.J. ROSSOUW SC

INSTRUCTED BY: Mr K.M. Röntgen (Snr) of Röntgen & Röntgen

DATE OF JUDGMENT: 20 May 2008