

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG, PRETORIA)

01/06/2011  
CASE NO: 1236/2011

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>OK</i>
<i>1/6/11</i>	<i>[Signature]</i>
DATE	SIGNATURE

In the ex parte application of

**TLAWENG JACOB LECHABA**

Applicant

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**J U D G M E N T**

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**MAKGOKA, J:**

[1] This is an application in terms of section 15 of the Attorney Act, 53 of 1979, for the admission of the applicant as an attorney of this court. It is not opposed by the Law Society of the Northern Provinces (the Law Society). The application came before me during recess on 7 April 2011. I removed the matter from the roll as I doubted the applicant's fitness to be admitted as an attorney. I undertook to give directives as to the further handling of the matter.

[2] The applicant has satisfied all the formal requirements for admission as an attorney. He has served articles of clerkship under three various principals, namely Messrs. Nathan Sher, Gurwantrai Laxman Bhika and Stanton Roy Bregman. It is during his service under Mr. Bhika that problems arose concerning the applicant's fitness. The facts are simple. Mr Bhika lodged a written complaint with the Law Society on 14 March 2006 as follows:

- "2. On 14<sup>th</sup> January 2006, (Mr. Lechaba) having written and passed his Board Exams, save for the exam relating to accountancy, we understand that he was to write said accountancy exam in March 2006. With his Articles having expired, Mr Lechaba left our employ on 31<sup>st</sup> January 2006.
3. Subsequently, we have been approached by a client of this practice, Zebediela Long Distance Association's Chairperson, Mr Lesley Makgabo, on the 21<sup>st</sup> February 2006, with allegations of payments being made to Mr Lechaba with promises made for action to be instituted by this practice and also other payments made regarding outstanding fees, which we had been attempting to recover from said client.
4. We then requested evidence of said payments, including proof thereof. Copies of an Acknowledgement of Debt dated 2<sup>nd</sup> December 2005 together with two deposit slips dated 2<sup>nd</sup> December 2005 and 5<sup>th</sup> December 2005 confirming deposit of payment into Mr Lechaba's account were received, which are attached for your records.
5. We were finally able to consult with client on 24<sup>th</sup> February 2006 whereat the following came to pass:
  - 5.1 In the action under case No. 2005/24226 in the High Court, WLD, being an Application instituted by this practice, of a total fee of R35 000.00 quoted, the practice received a sum of R15 000.00. We are advised, a further sum of R20 000.00 was paid, to Mr Lechaba personally, but not received by the practice.
  - 5.2 As evidenced by the acknowledgement of Debt and deposit slips, Mr Lechaba received some R65 000.00 which funds were to be held as security for a Kombi/taxi attached by the Respondent in the first action, allegedly, in order that the Kombi could be released. Client loaned the funds from Ms. Motsorwane Veronica Mogatlane, and as per the deposit slips it appears Mr Lechaba received said funds in his personal account, but did not take action, nor hand over the funds to this practice or follow through on the mandate.
  - 5.3 Mr Lechaba subsequently received initially a sum of R15000.00 and further sum of R9000.00 from a Mr. Samuel Sebothoma, who is a Respondent in the action instituted by the Respondent in the first matter under case no 2005/27602 in the High Court, WLD. The funds allegedly were received to defend the action and stop

the removal of the Kombi/taxi. It appears that the second and the third cases are linked.

6. In all of the above matters, neither the writer nor the practice had any knowledge of these arrangements, which only came to light on 24<sup>th</sup> February 2006, and Mr Lechaba has no mandate or authority to received funds from client into his personal account.
7. It also appears that Mr Lechaba had consulted on behalf of the client, with Advocate M. Nteleki on 3<sup>rd</sup> October 2005, but had reported to the practice that since Advocate Nteleki was not available to assist, there would be no fee payable to her and in the circumstances, the account is not payable. Based on that, we have been arguing with Advocate Nteleki that the account is not payable, and only on the 24<sup>th</sup> February 2006, were able to establish that this is not correct and that in fact consultations were held with Advocate Nteleki and that the amount is payable. Arrangements have been made with the Advocate in this regard.
8. As a result of the consultation and advice from clients, we immediately contacted Mr Lechaba and had a meeting with him whereat he acknowledged receipt of the funds together with a further sum of R500.00 loaned from a member of our staff. In order to assist clients, and on client's instructions, we undertook to hold over reporting of the matter to yourselves, pending settlement of the amounts owing. To this end, we concluded an Acknowledgement of Debt, which Mr Lechaba signed on 24<sup>th</sup> February 2006. A copy thereof is attached for your records.
9. In terms of said Acknowledgement of Debt, ***Mr Lechaba acknowledged misappropriation and theft of funds and acknowledged and agreed to pay said funds to the practice in the total sum of R106 500, which amount is computed as follows:***

9.1 Paid by ZELDTA for fees due to Bhikha Inc	R20 000.00
9.2 Received from Ms M.V Mogotlane	65 000.00
9.3 Received from Mr S Sebothoma*	15 000.00
9.4 Loan due to Bhikha Incorporated	6 000.00
9.5 Payable to C. Calvert, member of staff	<u>500.00</u>
TOTAL	<u>R106 500.00</u>

Note: At a subsequent meeting, namely on 6<sup>th</sup> March 2006, it was established that Mr Sebothoma had paid a further sum of R9 000.00 to Mr Lechaba as "tracker fee" after his vehicle was removed.

10. In the circumstances, I regret to have to advise and report unprofessional conduct, theft and /or misappropriation of funds as committed by a Candidate Attorney, during his employ with us. We believe that as a practice, we are not liable, nor responsible, but have agreed to take such action as may be necessary to assist clients in the recovery of their funds...."

(My emphasis)

[3] In his founding affidavit, the applicant classifies the above complaint as a "misunderstanding" between himself and Mr Bhika "which has been amicable (*sic*) resolved quite some time ago....". He gives the following explanation for receiving the monies into his personal account: Her aunt wished to loan money to the taxi association, but she wished that a loan agreement be signed first for repayment of the money. He was then requested by his family to act as a "family representative" (not legal representative) and that the money be deposited into his personal account until an acknowledgement of debt was signed.

[4] He further states that the funds were deposited into his personal account, upon the understanding that he would approach Bhika to represent the taxi association and that the funds would then be transferred into the trust account of Bhika Inc. once the loan agreement had been signed by the association. The funds were not paid to him for his personal use or benefit and that the arrangement was purely a matter of convenience. Members of the taxi association neglected to sign the loan agreement or acknowledgement of debt and accordingly, he could not release the funds to Bhika Inc. In paragraph 11.16 of his founding affidavit, the applicant states the following:

"As stated above I left the employ of Mr Bhikha at the end of January and commenced my articles with Mr Bregman and as a result I had little contact with Mr Bhikha. In mid February 2006 Mr Bhikha was approached by another member of the Association who showed him the deposit slips, relating to the deposits which my aunt made, and contended that the money was meant for Bhikha to proceed with legal work. This apparently led Mr Bhikha to believe that I was withholding the money without legitimate reason. I was approached by a furious Mr Bhikha who made accusations that I had improperly obtained funds which was supposed to have been paid into his trust account. As a result thereof Mr Bhikha laid a complaint at the Law

Society and presented me with an acknowledgement of debt which creates the impression that I conceded having unlawfully taken possession and even stolen the amount. I was so flabbergasted by Mr Bhikha's reaction that I didn't think twice in signing the acknowledgement of debt and I now realise that that was clearly ill-considered and a mistake. I never stole any monies and I never acted improperly. The complaint, which was withdrawn, should be seen in the light of all the facts.

[5] It appears that this complaint was not investigated by the Law Society at all. A letter dated 26 June 2006 from the Law Society to Mr. Bhika notes that the parties were attempting to "resolve" the matter and that the Law Society's file would "pend" its file. That is about the end of the Law Society's involvement in the matter, on the facts placed before the court.

[6] Upon reading the papers, I formed a *prima facie* view that the complaint by Mr. Bhika rendered the applicant unfit to be admitted as an attorney, despite that the Law Society has not investigated it. I had a very strong disposition to dismiss the application on that basis. Ultimately I decided against that, for the mere reason that I sat alone as it was during recess (normally these applications are heard by a bench of two Judges), considering that my *prima facie* view could be wrong. As a result I removed the matter from the roll instead of dismissing it.

[7] It totally escapes me how such serious allegations were not investigated by the Law Society. It does not matter that there could have been a "settlement" between the parties. The Law Society, as a *custos morum* of the attorneys' profession, bears a duty to investigate all complaints of misconduct by its members, including candidate attorneys. It is clearly an abdication of such duty to let go uninvestigated,

serious allegations of theft and misappropriation of what, clearly, were trust funds by the applicant.

[8] Another aspect warrants attention. The Law Society has pointed out that the applicant has not been exposed to the practise of law since 21 December 2006. (It should be 31 January 2007, in my view - the applicant completed his articles of clerkship on 31 January 2007). He attended the practical legal training for the purposes of section 15 (i) (b) (ivA) of the Act, in 2005. It is not entirely his fault that the application is only considered now. The Law Society has to express a firm view in this regard, should it recommend that the applicant is a fit and proper person for admission as an attorney. It would then be for the court, if it finds the applicant to be so fit and proper, to give direction whether the applicant should serve a further period of articles or attend a further practical legal training course.

[13] Having considered the totality of the issues, I make the following order:

1. The Registrar of this court is directed to bring this judgment to the attention of the Director: Professional Affairs, Law Society of the Northern Provinces;
2. The Director: Professional Affairs, Law Society of the Northern Provinces is directed to cause the complaint by attorney GL Bhika dated 14 March 2006, to be fully investigated with a view to recommend to this court, on the fitness or otherwise, of the applicant to be admitted as an attorney of this court.

3. The application shall not be re-enrolled until the investigation referred in paragraph 2 of this order has been completed and a recommendation consequent thereto, has been made.



**T M MAKGOKA**  
**JUDGE OF THE HIGH COURT**

<b>DATE OF HEARING</b>	<b>: 7 APRIL 2011</b>
<b>JUDGMENT DELIVERED</b>	<b>: 1 JUNE 2011</b>
<b>FOR THE PLAINTIFF</b>	<b>: ADV R J GROENEWALD</b>
<b>INSTRUCTED BY</b>	<b>: FRIEDLAND HART SOLOMON NICHOLSON, PRETORIA.</b>
<b>NO APPEARANCE FOR THE LAW SOCIETY.</b>	