



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE

SIGNATURE

3/11/2014
CASE NUMBER: 2606/2014

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES
(Incorporated as the Law Society of the Transvaal)

APPLICANT

AND

QABANISO HASTINGS DUBE

RESPONDENT

JUDGMENT

LEPHOKO AJ

[1] This is an application by the Law Society of the Northern Provinces (The Law Society) for the striking off of the respondent from the roll of practising attorneys of this

court. The respondent was admitted as an attorney of the Natal Provincial Division of the High Court on the 06 January 2009 and as an attorney of this court on 01 June 2009. The respondent was suspended as an attorney by order of this court on 04 February 2014. The application is unopposed.

[2] The grounds for the application are, amongst others, the following: It is alleged that the respondent contravened Rule 70.3 and Rule 70.4 of the rules of the Law Society by failing to submit to the Law Society his Rule 70 auditor's reports for the periods ending 28 February 2012 and 28 February 2013. These reports were due on or before the 31 August 2012 and the 31 August 2013 respectively.

[3] The Rule 70 auditor's report enables the Law Society to exercise its oversight function over the respondent and to satisfy itself that the respondent keeps his accounting records in accordance with the provisions of the rules of the Law Society and the Attorneys Act 53 of 1979 (the Attorneys Act).

[4] The respondent also submitted his Rule 70 Report for the period ending 28 February 2011 eleven months late on 6 July 2012. Due to the respondent failure to timeously submit this report he practised without a fidelity fund certificate for the period 1 January 2012 to about August 2012. The respondent has since 1 January 2013 practised as an attorney for his own account without a fidelity fund certificate in contravention of sections 41(1) and 41(2) of the Attorneys Act. Section 41(1) of the Act prohibits a practitioner from practising on own account or in partnership without being in

possession of a fidelity fund certificate and section 41(2) prohibits him from claiming any fees or disbursement in respect of any work performed without the fidelity fund certificate.

[5] A fidelity fund certificate is issued in order to protect the general public by indemnifying them against financial loss resulting from theft of trust money committed by a practising attorney. The respondent's failure to obtain a fidelity fund certificate is unlawful and places at risk his trust creditors that may suffer loss as a result of misappropriation of trust.

[6] Further allegations by the Law Society are that the respondent has contravened various sections of the Attorneys Act and rules of the Law Society by inter alia:

- (i) Misappropriating trust moneys held or received by him on account of his clients to the detriment of his trust creditors.
- (ii) Effected irregular transfers from his trust banking account to his business banking account.
- (iii) Receiving trust funds in an account other than a trust banking account in contravention of section 78(1) of the Attorneys Act
- (iv) Practising as an attorney without operating a trust banking account in contravention of section 78(1) of the Attorneys Act
- (v) Failing to account to his clients and delaying the payment of trust funds in terms of Rule 68.7 of rules of the Law Society.

- (vi) He contravened section 78(4) of the Attorneys Act read with rule 68.4.1 of the Law Society's rules by failing to keep proper accounting records in respect of his practice.

[7] It is also alleged that the respondent failed to cooperate with the Law Society by not handing his accounting records to the Law Society for purposes of an inspection thereof to enable it to determine the correct and current position of his trust account.

[8] The Law Society also received various serious complaints by respondent's clients who complained about the manner he handled their affairs. One such complaint is that lodged by Mr J H Baloyi in which the respondent was instructed to claim against Tusculum Properties for breach of contract. A settlement amount of R110 000-00 was paid into the respondent's trust banking account but he only paid R83 500-00 to Mr Baloyi and failed to account for the balance.

[9] It is also alleged that the respondent has abandoned his practice and his current whereabouts are unknown. This is a contravention of rule 3 of the rules of the Law Society. Various attempt to trace him using the services of tracers did not yield any positive result.

[10] These proceedings are of a disciplinary nature and *sui generis*. The Law Society brings the application as the guardian of morals of the attorneys' profession. It merely places facts for consideration by the court in the exercise of its disciplinary function over

attorneys as officers of the court to enable it to exercise its discretion as to the appropriateness of a sanction to be imposed in the event the allegation were found to be true. See: *Hassim v Incorporated Law Society of Natal* 1977 (2) SA 757 (A) at 767C-G; *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (T) at 393E; *Cirota And Another v Law Society, Transvaal* 1979 (1) SA 172 (A) at 187H and *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 851G-H.

[11] As the proceedings are disciplinary in nature it is expected of the respondent to co-operate and to provide the necessary information where appropriate, in order to place the full facts before the court to enable it to correctly and fairly adjudicate the matter. See *Prokureursorde van Transvaal v Kleynhans (supra)* at 853G-H.

[12] The respondent was served with this application but he chose not to oppose it. Serious allegations of misappropriation of trust funds and professional misconduct have been levelled against him. These allegations must be accepted as undisputed in the absence of any denial or opposition. It would be expected that the respondent who is accused of allegations that may lead to him being struck off the roll of attorneys and the resultant consequences thereof would take all reasonable steps to avert that outcome. The opinion of the Law Society as guardian of the morals of the attorneys' profession is that the respondent is no longer a fit and proper person to practice as an attorney. This opinion carries great weight with the court, although the court is not bound by it. See

Kaplan v Incorporated Law Society, Transvaal 1981 (2) SA 762 (T) at 78H; *Die Prokureursorde van die Oranje Vrystaat v Schoeman* 1977 (4) 588 (O) at 603A-B.

[13] It is noteworthy that the Law Society alleges that on 05 June 2013 the respondent informed it that his auditors were in the process of updating his accounting records and that audit reports for the financial years ending 29 February 2012 and 28 February 2013 would be submitted around the middle of July 2013. These reports are still outstanding. A reasonable inference to be drawn from the respondent's general conduct and failure to place his version before this court is that he has no answer to the serious allegations made against him. In the circumstances the court is satisfied that based on the unchallenged allegations before it, it has been established on a balance of probabilities that the respondent is not a fit and proper person to continue practising as an attorney.

In the premises the following order is made:

1. The order marked "X" attached hereto is made an order of court.



A L C M LEPHOKO
ACTING JUDGE OF THE HIGH COURT

And

A handwritten signature in black ink, appearing to read 'G. Webster', written over a horizontal line.

G WEBSTER
JUDGE OF THE HIGH COURT

Heard on: 30 October 2014

Judgment delivered on: 30 October 2014

For the Applicant: Mr J Leotlela (Attorney)

Applicant's Attorneys: Rooth & Wessels

For the First Respondent:

Instructed by:

"X"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: **2606/2014**

PRETORIA THIS 3rd DAY OF NOVEMBER 2014

**BEFORE THE HONOURABLE JUSTICE
BEFORE THE HONOURABLE JUSTICE**

THE LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the Transvaal)

Applicant

and

QABANISO HASTINGS DUBE

Respondent

DRAFT ORDER

Having heard counsel for the applicant and having read the papers filed of record

IT IS ORDERED

1. That the name of QABANISO HASTINGS DUBE, (the respondent) is struck off the roll of attorneys of this Honourable Court;
- 1.2 That respondent immediately hand and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court;
- 1.3 That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised

03/11/2014
[Signature]

and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court;

1.4 That the respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 1.5 hereof;

1.5 That Johan van Staden, the head: members affairs of applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of the respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondent's practice as attorney and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78 (2A) of Act No. 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:

1.5.1 immediately to take possession of the respondent's accounting records, records, files and documents as referred to in paragraph 1.6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to



operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the respondent was acting at the date of this order;

1.5.2 subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the respondent in respect of monies held, received and/or invested by the respondent in terms of section 78(1) and/or section 78(2) and/or section 78(2A) of Act No 53 of 1979 (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

1.5.3 to ascertain from respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

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- 1.5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of respondent and, if so, the amount of such claim;
- 1.5.5 to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;
- 1.5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;
- 1.5.7 in the event of there being any surplus in the trust account(s) of the respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 78(3) of Act No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the respondent, the costs, fees and expenses referred to in paragraph 1.14 of this order, or such portion thereof as has not already been separately paid by the respondent to applicant, and, if there is any balance left after payment in full of all such claims,



costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to the respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of the respondent's insolvent estate;

1.5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Attorneys Fidelity Fund;

1.5.9 subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

1.5.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of the respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

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- 1.6 That the respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:
- 1.6.1 any monies received, held or paid by the respondent for or on account of any person while practising as an attorney;
 - 1.6.2 any monies invested by the respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;
 - 1.6.3 any interest on monies so invested which was paid over or credited to the respondent;
 - 1.6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 1.6.5 any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 1.6.6 any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 1.6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by the respondent as or on behalf of the liquidator;



1.6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the respondent as or on behalf of the liquidator; and

1.6.9 the respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 1.6 hereof, provided that as far as such accounting records, records, files and documents are concerned, the respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

1.7 That should the respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.

1.8 That the curator shall be entitled to:

1.8.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

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1.8.2 require from the persons referred to in paragraph 1.9.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to the respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof.

1.8.3 Publish this order or an abridged version thereof in any newspaper he considers appropriate.

1.9 That the respondent be and is hereby removed from office as:

1.9.1 executor of any estate of which respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

1.9.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;

1.9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

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1.9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;

1.9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988; and

1.9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984.

1.10 That, if there are any trust funds available the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;

1.11 That a certificate issued by a director of the Attorney's Fidelity Fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

1.12 That respondent be and is hereby directed:

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- 1.12.1 to pay, in terms of section 78(5) of Act No. 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;
- 1.12.2 to pay the reasonable fees and expenses of the curator;
- 1.12.3 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 1.12.4 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 1.12.5 to pay the costs of this application on an attorney-and-client scale including the costs of 4 February 2014, 8 August 2014, 30 October 2014 and 3 November 2014

**BY ORDER OF COURT
REGISTRAR**

**64. ROTH & WESSELS INC
A Bloem/cj/MAT20693**

