


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. ✓	
12/3/2015.	
<u>DATE</u>	<u>SIGNATURE</u>

12/3/15
Case Number: 71840/14

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

MORRIS MOKASE

Respondent

JUDGMENT

POTTERILL J

[1] The applicant is applying that the respondent's name be struck from the roll of attorneys of this Honourable Court including ancillary relief. The respondent filed a

notice of intention to oppose dated the 8th of October 2014, but failed to file an answering affidavit. The notice of set-down of this hearing was properly served on the respondent's attorneys firm on the 19th of November 2014.

[2] The respondent was admitted and enrolled to practise as an attorney of this Court on 29 November 2011 and is presently practising as an attorney for his own account under the style of M Mokase Attorneys and Associates.

[3] The applicant contended that the offences committed by the respondent deviates to such an extent from the standards of professional conduct that the respondent is not a fit and proper person to continue to practise as an attorney.

[4] Swart's investigations

4.1 After the Law Society received three complaints against the respondent pertaining to the delayed payment of trust funds the Law Society instructed its chartered accountant and auditor, Mr. Deleeuw Swart ("Swart") to visit the respondent and conduct an investigation. Swart arranged an appointment with the respondent for 19 November 2012. The respondent did not keep this appointment date. The appointment was rescheduled for 5 February

2013. This appointment also never materialised. It was again rescheduled for 6 March 2013 to which the respondent again not avail himself. Swart was accordingly unable to conduct an inspection of the firm's accounting records and discuss the complaints with the respondent.

4.2 On 18 July 2013 the Law Society received a letter from the respondent advising that he will be available from 23 September 2013 should Swart want to meet with him. The Law Society in answer thereto addressed an e-mail suggesting a number of dates to which the respondent failed to reply. A second e-mail was sent by the Law Society requesting dates which were also ignored by the respondent. The Law Society addressed a third e-mail to the respondent and advised that Swart would visit the firm on the 25th of September 2013 or the 26th of September 2013. This was again ignored by the respondent. On 25 September 2013 Swart found that the respondent's offices were locked and desolate. Swart was unable to determine the balance of the trust creditors and did not obtain the accounting records.

4.3 Swart obtained a certificate of balance from First National Bank which reflected on 13 March 2013 that there was an amount of R4 156.45 available in the respondent's trust banking account. Swart's inspection of the Rule 70 auditor's report revealed that there were substantial trust deficits in the respondent's bookkeeping in the amounts of R78 900.02, R282 497.83 and R1 212 387.74.

[5] Reddy's investigations

Mr. A. Reddy of the Law Society's auditor/monitoring unit, a chartered accountant of South Africa, was also requested by the Law Society to investigate the complaint of Cochrane. His instructions were to provide an overview of the accounting and supporting records, systems and procedures with a view to establish the general state thereof and the identification of and commentary on any aspects considered irregular and/or unsatisfactory. Furthermore he also had to determine the trust position of the firm at a specific or selected dates and to report on any trust deficiencies or other similar irregularities. Despite attempts to contact the respondent telephonically on his mobile as well as on his office telephone as well as visiting the firm's address on record there was no contact made with the respondent. Mr. Reddy concluded that the respondent's office as closed and the whereabouts of Mr. Mokase were unknown.

[6] Further investigations by Swart

On the 19th of May 2014 the Law Society once again instructed Swart to proceed with an inspection and to visit the respondent on 28 May 2014. The Law Society had traced the respondent to No 53 Bergartillerie Road, Danville Ext 5, Pretoria. Swart attended this address which he found to be a residential address. At this address nobody opened the door. Swart contacted the respondent on his mobile

phone and the respondent informed Swart that he was under the impression that the meeting had in fact been scheduled for 29 May 2014 and not 28 May 2014. On 29 May 2014 Swart received a telephone call from the respondent advising him that his auditors were still in the process of preparing his accounting records and the records would be available shortly. Swart's inspection was rescheduled for 4 June 2014. On 4 June 2014 Swart again attended the premises and again received no response. Swart tried to contact the respondent telephonically and this was also unsuccessful.

- [7] The Law Society instructed a chartered accountant and auditor in the employ of the Law Society, Ms. Mapfumo ("Mapfumo") to conduct an inspection after the Law Society received a complaint against the respondent to the effect that he failed to account in respect of trust funds. Mapfumo found that the respondent effected irregular transfers from his trust banking account to his business banking account. The respondent failed to account to his clients. She further found that the respondent failed to ensure that withdrawals from the trust banking account were made as transfers to his business banking account and that he failed to ensure that the account of any trust creditor was in debt.

- [8] Offences committed by respondent

8.1 The respondent failed to submit his Rule 70 auditor's report for the period ending 28 February 2013 to the Law Society.

8.2 The respondent is not in possession of a fidelity fund certificate for 2014 and has accordingly practised without such certificate since 1 January 2014.

[9] Complaints received against the respondent

9.1 The Law Society received a complaint from Mofomme Attorneys of Pretoria on behalf of Mr N.M. Ngobese. The respondent was instructed to lodge a claim on Ngobese's behalf against the Road Accident Fund. The claim was finalised, but the respondent failed to account to Ngobese in respect of the proceeds thereof. Ngobese was forced to institute a civil claim against the respondent and on 5 February 2010 obtained a judgment against the respondent for an amount of R281 184.00 plus taxed costs in an amount of R89 395.18. The respondent subsequently lodged a claim with the Attorneys Indemnity Insurance Fund and the Fund on 4 October 2011 paid in an amount of R233 544.20 into his trust banking account. Despite this payment the respondent failed to make payment to Ngobese. Ngobese concluded that the respondent had misappropriated his monies.

9.2 The Law Society similarly received a complaint against the respondent from Mr L.L. Lugayeni ("Lugayeni"). Lugayeni and his spouse purchased an

immovable property located in Benoni during March 2010 and instructed the respondent to attend to the registration of the transfer. To facilitate the transfer Lugayeni deposited an amount of R83 000.00 into the respondent's trust banking account on 19 March 2010. The registration of the transfer was delayed for six months and Lugayeni instructed the respondent to repay the deposit. Surprisingly the respondent advised Lugayeni that his deposit had been utilised for purposes of the purchase of alternative property, located in another street in Benoni. Neither Lugayeni nor his wife authorised the respondent to conclude such an agreement on their behalf. Lugayeni accordingly instructed the respondent to repay their deposit. The respondent failed and/or refused to comply with their demand. Lugayeni also lodged a claim against the Attorneys Fidelity Fund for this amount of money.

- 9.3 The Law Society furthermore received a complaint from Hendricks Incorporated Attorney on behalf of Mr A.P. Cochrane ("Cochrane") dated 19 November 2012. Cochrane was nominated as the executor of the estate of the late P Cochrane. The late Cochrane had consulted the respondent and instructed him to lodge a third party claim on his behalf against the Road Accident Fund. The respondent finalised the claim and received the proceeds in an amount of R900 000.00 from the Road Accident Fund on 11 July 2012. The respondent failed to account to the deceased estate. The

respondent requested Cochrane to sign documents for Cochrane to be appointed as the executor in the deceased estate of the late Cochrane which Cochrane signed. A letter of executorship was however never issued despite a lapse of five months. Hendricks Inc. on behalf of Cochrane attempted to communicate with the respondent regarding the matter, but the respondent failed to reply to its letters and telephone calls.

- 9.4 Ms B.N. Kekana ("Kekana") approached the respondent and instructed him to assist her with a divorce and maintenance matter. Kekana paid a deposit in the amount of R2 500.00 to the respondent. These monies were however paid into the respondent's business banking account instead of his trust banking account. The respondent failed to execute his mandate, to advise Kekana correctly and properly and also failed to advise Kekana on the legal costs relating to the two matters. As a result thereof the respondent was notified to appear before a disciplinary committee of the Council on the 31st of July 2013 in order to answer to a charge relating to the contravention of Rule 89.15 of the Law Society's Rules. The respondent pleaded not guilty to the charge but the disciplinary committee found the respondent guilty of the charge. The order of the disciplinary committee was that the respondent had to provide proof that Kekana's deposit in the amount of R2 500.00 was transferred from his business banking account to his trust

banking account. The respondent failed to comply with the order of the disciplinary committee and persisted in this failure.

9.5 On 16 August 2014 Ms. Ramasodi ("Ramasodi") submitted a complaint against the respondent to the Law Society. Ramasodi instructed the respondent to act on behalf of her son in a criminal matter and had paid the respondent a deposit of R15 000.00. The respondent failed to execute the instruction despite receiving this deposit.

[10] The respondent was notified to appear before a disciplinary committee of the Council on 25 April 2013 to answer the charges relating to Mr. Chauke, Mr. and Ms. Khumalo and Mr. Lugayeni. The respondent attended the disciplinary proceedings and pleaded not guilty to charge 1 and guilty to charges 2 and 3. The disciplinary committee found the respondent guilty on all charges and the disciplinary committee compiled a Rule 101 report. The Law Society requested the respondent to furnish comments to the Council on or before 5 August 2013 as to why his name should not be struck from the roll of attorneys. On 4 August 2013 the respondent submitted his written comments. The respondent *inter alia* admitted his failure to account in respect of trust funds and his failure to report to his clients. The respondent proffered the explanation that certain monies of his clients were "*swindled*" by estate agents. The respondent submitted that his suspension from practising as an attorney or the removal of his name would be a viable solution.

Despite the respondent's commitment to reimburse his clients this commitment was never fulfilled.

[11] In considering such an application the court must first decide whether the offending conduct was established on a preponderance of probabilities and secondly whether, as stated in section 22(1)(d) of the Attorneys Act, the respondent concerned in the discretion of the court is not a fit and proper person to continue to practise.

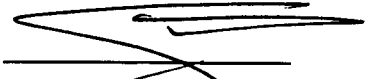
[12] In this matter the offending conduct not being disputed, the only questions to be answered are whether the respondent is a fit and proper person to continue to practise and whether he should be struck from the roll. Having regard to the conduct of the respondent it is clear that he indeed made himself guilty of unprofessional, dishonourable or unworthy conduct. It is required of any attorney to adhere to the specific requirements of the Attorneys Act and Rules pertaining to trust monies. This is so because trust money is money of the public which is placed under control and custody of an attorney. Lodging an auditor's report as required serves as a safety mechanism for the public and the client's money and is a prerequisite for an attorney to be issued with a fidelity fund certificate. In failing to do so the respondent has not aspired to meet the standard of behaviour which is required of an attorney. The respondent failed to account to his clients in respect of

trust funds and delayed the payment of trust funds. In fact the respondent misappropriated the trust funds. The respondent furthermore over-reached a client. The respondent placed the Attorney's Fidelity Fund at risk. The respondent failed to render professional services of an adequate standard to the affairs of his client. There is a substantial deficit in the respondent's bookkeeping. Individually and cumulatively all these offences render the respondent unfit to practise as an attorney – *Malan v The Law Society of the Northern Provinces* [2009] 1 All SA 133 (SCA).

[13] I am satisfied that the respondent is not a fit and proper person to continue to practise, his conduct cannot be excused and the respondent is to be struck from the roll – *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA).

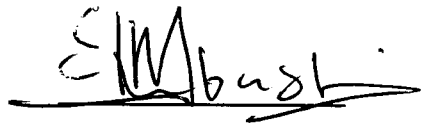
[14] I am satisfied that the applicant has made out a proper case for the related prayers as set out in the notice of motion and in the circumstances the prayer for costs to be on and attorney and client scale is also warranted – *Botha v Law Society of the Northern Provinces* 2009 (1) SA 227 (SCA) at 236F-G.

[15] I accordingly mark the draft order "X" and it is made an order of court.


S. POTTERILL

JUDGE OF THE HIGH COURT

I agree



E.M. KUBUSHI

JUDGE OF THE HIGH COURT

CASE NO: 71840/14

HEARD ON: 12 March 2015

FOR THE APPLICANT: Ms. F. Asmall

INSTRUCTED BY: Rooth & Wessels Inc.

FOR THE RESPONDENT: No appearance

DATE OF JUDGMENT: 12 March 2015

"X" *He* 12/3/2015

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION – PRETORIA

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Case number: 71804/14

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ON THIS THE 12TH DAY OF MARCH 2014 *5*

BEFORE THE HONOURABLE JUSTICE POTTERILL
BEFORE THE HONOURABLE JUSTICE KUBUSHI

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the Transvaal)

Applicant

and

MORRIS MOKASE

Respondent

DRAFT ORDER

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

IT IS ORDERED

1. That **MORRIS MOKASE** (the respondent) is struck from the roll of attorneys of this Honourable Court.

2. That respondent immediately surrenders and delivers to the registrar of this Honourable Court his certificate of enrolment as an attorney and conveyancer of this Honourable Court.
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 certificates are, be authorised and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court.
4. That respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof.
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 respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondent's practice as an 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:

- 5.1 immediately to take possession of respondent's accounting records, records, files and documents as referred to in paragraph 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 respondent was acting at the date of this order;
- 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 respondent in respect of monies held, received and/or invested by

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 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);

- 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); 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;
- 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;

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- 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;
- 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;
- 5.7 in the event of there being any surplus in the trust account(s) of 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 respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by 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

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respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;

- 5.8 in the event of there being insufficient trust monies in the trust banking account(s) of 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;
- 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
- 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 respondent has/have been dealt

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with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:
 - 6.1 any monies received, held or paid by respondent for or on account of any person while practising as an attorney;
 - 6.2 any monies invested by respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;
 - 6.3 any interest on monies so invested which was paid over or credited to respondent;
 - 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5 any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

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- 6.6 any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
- 6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by respondent as or on behalf of the liquidator;
- 6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by respondent as or on behalf of the liquidator; and
- 6.9 respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.
7. That should 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 respondent (as the case may be), the sheriff for the district

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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.

8. That the curator shall be entitled to:

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;

8.2 require from the persons referred to in paragraph 8.1 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 respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

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8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 wind-up of the respondent's practice.

9. That respondent be and is hereby removed from office as –

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);

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;

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

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

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- 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
- 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and
- 9.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.
10. That respondent be and is hereby directed:
- 10.1 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;
- 10.2 to pay the reasonable fees of the auditor engaged by applicant;
- 10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

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- 10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 10.6 to pay the costs of this application on an attorney-and-client scale.
11. 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;
12. That a certificate issued by a director of the Attorneys Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be

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authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

13. That the respondent is ordered to pay the costs of this application on an attorney and client scale.

BY ORDER OF COURT

REGISTRAR

64. **Rooth & Wessels Inc**
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