


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

| | |
|--|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED |
|  SIGNATURE | |
| 23/4/2020 DATE | |



Case Number: 72276/18

In the matter of:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

And

ANDREAS JOHANNES OBERLECHNER

Respondent

JUDGMENT: APPLICATION FOR STRIKING OFF AS ATTORNEY

BAM, J

1. The respondent was admitted to practice as an attorney of this court on 16 February 1988. His name is still on the roll. He is practising under the name and style of *Oberlecher (AJ) Attorney*, at Oberholzer, Gauteng.
2. The applicant applies for the striking off of the respondent on the alleged misappropriation of trust funds.
3. Following upon an urgent application, the respondent was on 6 November 2018, by way of an order of this court, suspended from practising as an attorney pending the finalisation of the application to

4. The grounds for the urgent, and present application, were based on the investigation of the respondent's affairs by Mr Vincent Farris, a chartered accountant, instructed by the applicant. Mr Farris was briefed to investigate numerous complaints concerning financial aspects of the respondent's practice.

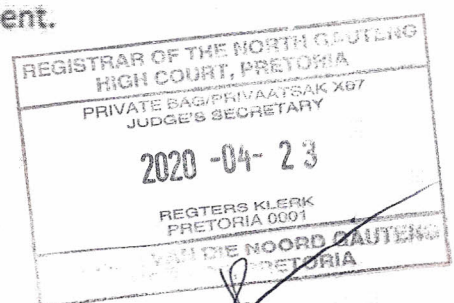
5. The subsequent events can be summarised as follows:

- 5.1 Mr Farris made his first contact with the respondent on 20 March 2018, informing the respondent of the nature of his investigation. Eventually, after having received no reaction from the respondent, Mr Farris succeeded to meet up with the respondent on 25 May 2018 at the offices of the applicant. The respondent admitted that he was aware of a complaint, of a certain Ms Bunce (which turned upon the respondent's alleged failure to pay the full maintenance amount to her), and undertook to make his Trust account records and his Business accounting records available, and undertook to give his full co-operation. The respondent however, was unable to furnish Mr Farris with his accounting records or any detail in that regard, stating it was in possession of his, independent, bookkeeper. It followed that Mr Farris was unable to comment and report further on the firm's financial affairs and the Trust account. It further followed that Mr Farris recommended that the respondent be placed under terms to make the said records available.

- 5.2 The return date of the draft order was 1 August 2019 and the matter was set down.



- 5.3 In the meantime the applicant filed a supplementary affidavit referring to the curator's report, addressed in the urgent order of 6 November 2018. (The curator was Mr J van Staden assisted by Ms Veldman. The report is dated 12 May 2019).
- 5.4 On 8 November 2018 the curator received three lever arched files of the respondent's accounting records from the respondent's attorneys of record. The curator then arranged for a meeting with the respondent on 12 November. The purpose of the meeting was to follow up the report of Mr Farris concerning the inadequate information pertaining to the respondent's records and questions about the Trust account.
- 5.5 On 6 December the curator and the respondent met. The respondent reported that he had handed his current files to one Mr K Nike and undertook to provide the curator with Nike's particulars as well as the list of records handed to that person. The respondent furnished certain information, including the following. He dealt only with labour issues. The respondent stated that he was appointed as executor in respect of two estates. He was not aware of any Trust creditors to his firm. One Mr Jaap Vermaak was the administrator in a deceased estate and withdrew moneys from an amount in his bank account. He did not furnish any particulars of the said estate.
- 5.6 The respondent undertook to furnish the curator with his certificate of enrolment as an attorney, and added that he intended acting as a consultant in labour matters in the future.
- 5.7 On 8 January 2019 Ms Veldman enquired by Email from the respondent about his aforementioned undertakings. When the respondent did not react, the enquiry was followed up on 4 March 2019, about the particulars of his auditor, Mr van Dam and Nike, again with no response from the respondent.

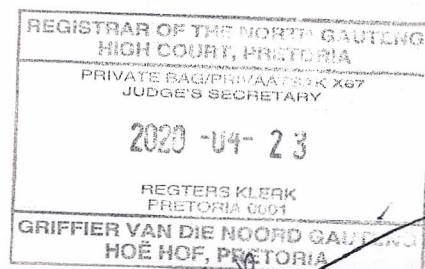


- 5.8 The curator however managed to make contact with Van Dam who denied that he was in possession of the respondent's business related records.
- 5.9 The curator the discovered that the respondent's Trust account, held at Florida branch of ABSA showed an amount of R65-85 available.
- 5.10 The curator did not receive any further information about the respondent's files. Attempts to liaise with Nike were unsuccessful.
- 5.11 On 3 May 2019 a claim of R1 499 648 00 had been lodged against the Fund. It is still investigated.
- 5.12 A Mr Peter Brunseley approached the curator with a claim of R15 000 00. It was referred to the Fund.
- 5.13 A report from a firm of attorneys, Smith Van Der Watt Attorneys Inc reported that the respondent was still appearing in court cases.
6. In a further supplementary affidavit, filed on behalf of the applicant on 12 June 2019, reference is made to two additional complaints received by the applicant:
- (i) Mr WP Kruger, CEO of a business named Airflex, complained that the respondent failed to execute his mandate in respect of the liquidation of a certain company; that he delayed the procedure and did not react to correspondence; and that despite the payment of R15 000 00 and R20 000,00 the respondent did not execute his instructions, and did not account to Kruger concerning the amounts in Trust, despite his undertakings.
 - (ii) Mr PJ Barnesley complained that the respondent, in an immovable property transaction was paid R21 000 00 but failed to advise him,



and he did not receive any communication from the respondent. Despite his request the money was not returned to Barnesley and the respondent did not account to him.

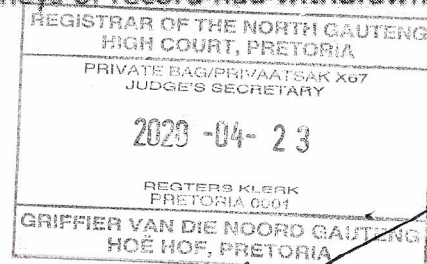
7. The supplementary reports of the applicant and other relevant documents reflecting the issues referred to above were served on the respondent on 2 July 2019.
8. The matter was enrolled for hearing on 1 August 2019. In this regard the respondent stated in his founding affidavit (referred to below) that he was still in shock when the notice of enrolment was served on him, and that he had made a mental note of the date, and that he all the way intended to appoint an attorney and counsel to represent him.
9. On 31 July the respondent filed his notice of opposition, and his application for postponement of the hearing, together with a founding affidavit signed on 31 July 2019. The respondent, at the time, was represented by JJ Fryer Attorneys, Pretoria.
10. The respondent based his application on a lack of time to answer to the new allegations served on him on 2 July 2019. The respondent's founding affidavit also addresses certain of the allegations of the applicant that the respondent contravened several provisions of the Attorney's Act, and emphasised that the applicant's allegations are speculative and unfounded. In respect of the issue why the respondent did not react when the application was served on him during October 2018, the respondent said he went into shock when the application was served on him. The respondent, in an attempt to explain his failure to react to the application, as mentioned above, blamed his erstwhile principal, Attorney Daryl Ackerman, who would failed to enter appearance and instruct counsel to represent him.
11. The respondent's application for postponement was granted on 1 August 2019. The respondent was ordered to file his answering affidavit on 30 September 2019.



12. The respondent failed to comply with the court order of 1 August 2019 in not filing any answering affidavit.
13. The Notice of Set Down of this application was served on the respondent personally on 11 November 2019. The respondent was also informed to file heads of argument on 6 April 2020.
14. On 30 January 2020 the respondent's attorneys of record, JG FRYER, filed a notice of withdrawal. The respondent was duly notified. No reason for the withdrawal of the attorneys was at any stage recorded by the respondent.
15. No heads of argument have been filed on behalf of the respondent despite of the fact that the notice of enrolment indicating that heads had to be filed, was served on the respondent personally.
16. On the day of the hearing, 23 April 2020, the respondent remained in default, without notifying the Registrar and or the applicant of his reasons therefore.

Evaluation:

17. The respondent continuously, since 2014, showed a total disregard for the investigation of the complaints and failed to co-operate with the applicant's investigations into the complaints against him. This attitude continued even up to the date of trial. The fact that the country is in a Lockdown situation since 26 March does not avail the respondent. He is not a lay person and had at least access to the applicant by way of Email. The respondent did nothing to explain any problem he could have encountered.
18. The respondent's failure to comply with the court order of 1 August 2019, to file his answering affidavit, prima facie, amounts to contempt of court. Even after the respondent's attorneys of record had withdrawn in



January 2020, of which the respondent was aware, the respondent just ignored the process, well knowing what serious implication it could have. The fact that the respondent endeavoured to address some of the issues in his founding affidavit for the postponement on 1 August 2019, only partly addressed the issues and did not, inter alia, explain his failure to co-operate or to keep proper accounting records.

19. It is remarkable that the respondent attempted to shift the blame for not having entered appearance when the application was served on him to his erstwhile principal. This attempt by the respondent was palpably not true.

20. It is contended by the applicant in the comprehensive heads of argument, that the conduct of the respondent, throughout, falls short of what is required, and expected from an attorney. Based on the factual situation in this matter it was contended that the respondent is to be blamed for the following: He failed to administer a specific estate as he was required to do; He failed to satisfy a client (Mr Bunce) about the safety of estate funds under his control; He consistently failed to reply to correspondence from clients and the regulator; He consistently comply with his own undertakings to furnish the appropriate financial records to the curator and the Law Society; He failed to account to clients; His professional work was unreasonable careless; he failed to keep proper accounting records; He mismanaged trust funds.

21. We are satisfied that it has been established that the conduct of the respondent, summarised above, justifies a finding that he was at all relevant times obstructive and but attempted to delay the proceedings.

22. We are further satisfied that the offending conduct of the respondent had been proved.

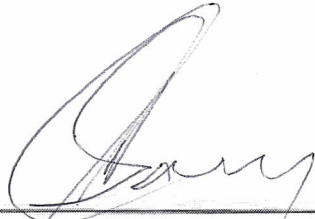
23. It follows that we agree with the contentions of the applicant contained in the comprehensive heads of argument, drafted by Mr L Groome, that the respondent is not a fit and proper person to practice as an attorney.

| |
|--|
| REPUBLIC OF SOUTH AFRICA HIGH COURT, PRETORIA PRIVATE BAG/PRIVAATSAK X67 JUDGE'S SECRETARY 2020 -04- 23 REGTERS KLERK PRETORIA 021 GRIFFIER VAN DIE NOORD- OORDE HOË HOF, PRETORIA |
|--|



24. The draft court order is consistent with reality and our finding, including the issue of costs.

25. The draft order marked "X" is made an order of court.



A J BAM

JUDGE OF THE HIGH COURT



PD PHAHLANE

ACTING JUDGE OF THE HIGH COURT

23 April 2020

| |
|--|
| REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA |
| PRIVATE BAG/PRIVAATSAK X67 JUDGE'S SECRETARY |
| 2020 -04- 23 |
| REGTERS KLERK PRETORIA 0001 |
| GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA |

