



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 16829/2020

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES/☒ NO
(3) REVISED

DATE 17/12/2021

SI

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

And

RAMERE SIMON MAMETJA

RESPONDENT

JUDGMENT

HAUPT AJ

INTRODUCTION:

- [1] This is an application in terms of Section 44(1) of the Legal Practice Act¹ ("LPA") for an order that the name of the respondent be struck off the roll of legal

practitioners, alternatively that he be finally suspended from practicing as an attorney.

- [2] The applicant is the South African Legal Practice Council ("LPC"). The application constitutes a disciplinary enquiry by the Court into the question of whether the respondent can still be regarded to be a fit and proper person to remain on the roll of legal practitioners (attorneys).²

- [3] The respondent was admitted as an attorney on 1 July 1999. According to the LPC's records the respondent is a single practitioner who practises under the style of RS Mametja Attorney with offices in Springs, Gauteng Province.

- [4] The LPC was not able to effect personal service of the application on the respondent as it appears that he has abandoned his practice. Several unsuccessful attempts were made to serve the application on the respondent personally at the last known addresses provide by him to the LPC and at addresses provided by tracers that were appointed by the LPC. The service affidavit filed by the applicant's attorney of record confirms that the respondent has been extremely evasive and has refused to provide his residential address to avoid creditors. As a result, the application was served by affixing at the respondent's practice address and by email to his last known e-mail addresses.

- [5] On 9 June 2020 the matter came before Ranchod J in the Urgent Court. An interim order with a return date of 18 August 2020 was granted in terms of which

² *Law Society of the Northern Provinces v Le Roux* 2012 (4) SA 500 (GNP) at 502 E – F

the respondent was suspended from practicing as an attorney pending the finalisation of the application and he was ordered to immediately hand over his certificate of enrolment as an attorney to the Registrar. A curator was also appointed to administer and control the trust account(s) of the respondent. The order further provides for the respondent to show cause why the order should not be made final, alternatively, why his name should not be struck from the roll. Substituted service was ordered as follows:

"14. That the applicant is to:

- 14.1 serve a copy of this order on the respondent by way of publication of an abridged version hereof in one edition of the Sowetan Newspaper and one edition of the Star Newspaper;*
- 14.2 inform the respondent in the above mentioned publication that the notice of motion and founding affidavit with annexures are available for inspection at the offices of the Legal Practice Council's attorneys of record, Rooth & Wessels Inc. at Walker Creek II, Walker Creek Office Park, 90 Florence Ribeiro Avenue, Nieuw Muckleneuk, Pretoria, Tel: 012 452 4000;*
- 14.3 send a copy of this order to the respondent's last known email addresses, ramere@telkomsa.net and rsmametja@telkomsa.net; and*
- 14.4 inform the respondent of this order by way of sms to the respondent's last known number 076 376 9939."*

[6] A service affidavit by the LPC's attorney of record has been filed confirming compliance with the order of Ranchod J. As no answering affidavit has been filed, the allegations made by the LPC stand uncontested.

- [7] The matter came before Makubele J and myself on the return date. It was considered on the papers only and no oral argument was heard. On 20 August 2020 an order was made reserving judgment. Makubele J was to write the judgment. On 3 December 2021 I was asked to finalise the judgment as Makubele J is on long leave. On behalf of the Bench, I apologise for any inconvenience caused by the unfortunate and inordinate delay in the finalisation of the matter.

RELEVANT LEGAL REQUIREMENTS:

- [8] It is trite that applications of this nature constitute a disciplinary enquiry by the Court into the conduct of the practitioner concerned and the proceedings are *sui generis* in nature.³ The provisions of the LPA do not derogate in any way from the inherent power of the Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner.⁴
- [9] The question of whether an attorney is no longer a fit and proper person to practise as such lies in the discretion of the Court. The Court's discretion is not exclusively derived from the LPA, but is inherent in nature, over and above the

³ *Solomon v The Law Society of the Cape of Good Hope* 1934 (AD) 401 at 407; *Cirota and Another v Law Society, Transvaal* 1979 (1) SA 172 (A) at 187 H; *Prokureursorde van Transvaal v Kleuynhans* 1995 (1) SA 839 (T) at 851 G-H

⁴ Section 44(1) of the LPA

provisions of the Act.⁵ The appropriate sanction, namely a suspension from practice or striking from the roll, also lies within the discretion of the Court.⁶

[10] Whether or not the Court ought to remove a practitioner's name from the roll or suspend him from practice, entails a three stage inquiry:

[10.1] The first inquiry is for the Court to decide whether or not the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry.

[10.2] Once the Court is satisfied that the offending conduct has been established, the second inquiry is whether the practitioner concerned is a fit and proper person to continue to practise. This inquiry entails a value judgment, which involves the weighing up of the conduct complained of against the conduct expected of an attorney.

[10.3] If the Court is of the view that the practitioner is not a fit and proper person to practise as an attorney, the third inquiry is whether in all the circumstances the practitioner in question is to be removed from the roll of attorneys or whether an order suspending him from practice for a specified period will suffice. This will depend on facts such as the nature of the conduct complained of, the extent to which it reflects upon the person's character or

⁵ *Prokureursorde van Transvaal v Kleynhans supra* at 851 E-F; *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A) at 638 C – 639 F; *Law Society of Transvaal v Tloubatla* [1999] 4 All SA 59 (D) at 63 G- I; *Law Society of the Transvaal v Machaka and Others (no 2)* 1998 (4) SA 413 (TPD)

⁶ *A v Law Society of the Cape of Good Hope* 1989 (1) SA 849 (A) at 851 A – F; *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) at 51 B-I

shows him to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately this is a question of degree. In deciding whether an attorney ought to be removed from the roll or suspended from practice, the Court is not first and foremost imposing a penalty - the main consideration is the protection of the public.⁷

COMPLAINTS AGAINST THE RESPONDENT:

[11] The application has its origin in several complaints received by the LPC and erstwhile Law Society regarding *inter alia* the following:

- [11.1] the respondent's failure to account for trust funds in his care;
- [11.2] the LPC's attempt to inspect the respondent's practice affairs and his failure to assist in such inspection;
- [11.3] the respondent's failure to comply with his statutory obligations as a legal practitioner; and
- [11.4] his continued practise as a legal practitioner in contravention of the LPA in particular his failure to submit his audited financial statements and that he was not in possession of a Fidelity Fund Certificate.

[12] The complaints received from the respondent's clients are summarised as follows:

⁷ *Jasat v Natal Law Society supra*; *Law Society of the Cape of Good Hope v Budricks* 2003 (2) SA 11 (SCA) at 13 H – 14; *Malan v The Law Society of the Northern Provinces* 2009 (1) SA 216 (SCA) at 219, par 7

[12.1] *T N Kgeletsane* (dated 24 August 2018):

The complaint was referred to the respondent by the LPC and he failed to respond thereto. The Road Accident Fund ("RAF") paid R440,000.00 into the respondent's trust account in payment of a claim by Kgeletsane. The payment was effected in two instalments on 27 July 2015 and 13 August 2015. The respondent paid an amount of R142,000.00 to Kgeletsane from these funds. He failed to account to Kgeletsane for the balance of the proceeds and persisted in his failure.

[12.2] *A Motau* (dated 13 May 2019):

Motau deposited R450,000.00 into the respondent's trust account on November 2018 for the purchase of an immovable property. The respondent was to attend to the transfer and registration. After several months of inaction and not being able to reach the respondent, Motau cancelled the sale agreement on 9 April 2019. The respondent failed to account for Motau's funds and their whereabouts are unknown. From the trust bank balances included in the LPC's inspection report submitted by the auditor, Ms Hlongoane as referred to in [13] hereunder, it is apparent that Motau's funds are not available in trust.

[12.3] *C Ndlovu* (dated 22 August 2019):

The RAF paid a total amount of R179,869.00 into the respondent's trust bank account in payment of a claim by Ndlovu. The payment was effected in two instalments on 16 February 2017 and 29 September 2017. The respondent paid Ndlovu an amount of R16,000.00 and this was said to be from his own

personal funds. Ndlovu was informed of the payment upon her investigation and enquiry with the RAF.

[12.4] *J J Ngwenya* (dated 14 January 2020):

The RAF paid R302,638.28 on 29 May 2018 into the respondent's trust bank account in payment of a claim by Ngwenya. The respondent did not inform Ngwenya of the receipt of these funds, nor has the respondent paid anything to Ngwenya.

[12.5] *S E Magagula* (dated 10 February 2020):

The RAF paid R700,000.00 on 30 August 2013 into the respondent's trust bank account in payment of a claim by one Ngwenya. Ngwenya passed away shortly before the funds were paid to the respondent. The respondent has, however, not accounted for the funds to Ngwenya's family.

[13] The LPC attempted to inspect the respondent's practice affairs during October 2019 and instructed Ms Hlogoana, an auditor in its employ in the Department Risk and Compliance to conduct the inspection. Ms Hlogoana's report confirms the following:

[13.1] the respondent did not respond to communications addressed to him. His practice could not be located at the address provided by the LPC, nor at the addresses sourced in the LPC's attempts to locate him. The security guards at the premises where the respondent's practice is situated informed her that the respondent had abandoned his practice eight months earlier. The Centre Management also confirmed this and they had no further contact details of the respondent. Even the XDS tracing reports were of no assistance. The

two addresses indicated in the reports were physically inspected: the first address in Springs did not exist and the second address in Brakpan was a vacant property which displayed a "for sale" sign in front;

- [13.2] although Hlogoana was unable to determine the respondent's actual trust position, she obtained records detailing the respondent's trust bank balance as at 25 July 2019 (R1,472.16) and on 14 August 2019 (R1,381.33). From this was able to determine the existence of the following trust deficits:

	25 July 2019 (Rands)	14 August 2019 (Rands)
Complaint: C T Ndlovu	117,429.59	117,520.42
Complaint: A Motau	448,527.84	448,618.67
TOTAL	565,957.43	566,139.09

- [13.3] the respondent has also failed to pay his membership fees for the 2019 and 2020 periods to the LPC. He has also failed to pay a fine imposed upon him for his failure to perform work of a professional nature with the appropriate degree of skill, care or attention, or to an appropriate quality or standard;⁸

- [13.4] the respondent has failed to submit his annual auditor's report to the LPC for the period ending 28 February 2019 (which was due on 31 August 2019). The annual auditor's report is intended to satisfy the LPC that, *prima facie*, a practitioner has kept proper accounting records and that the trust funds entrusted to the practitioner are handled and administered properly. The

⁸ Membership fees are payable annually in terms of Rule 4 of the LPC Rules. A contravention of the provisions of Rule 4 amounts to unprofessional conduct in terms of Ruler 57.1 of the LPC Rules

LPC addressed a letter to the respondent regarding his failure to submit the requisite audit report, to which he did not reply;

[13.5] bearing in mind that a Fidelity Fund Certificate is issued on the strength of an unqualified audit report, the failure to submit an unqualified auditor's report disentitles a practitioner to be issued with a Fidelity Fund Certificate. The respondent does not qualify for, and has not been issued with, a Fidelity Fund Certificate for the period 1 January 2020 to date. As a result his continued practice is contrary to the peremptory provisions of section 84(1) of the LPA.⁹ It must be borne in mind that a Fidelity Fund Certificate serves an important function - its purpose is to protect the public from pecuniary loss as a result of theft of trust funds committed by a practising attorney or persons in his employ. Thus, the respondent's continued practise since 1 January 2018 without a Fidelity Fund Certificate is a very serious breach of the rules of the profession;

[13.6] she could not obtain reasonable assurance on whether the trust accounts were maintained in accordance with the LPA and the Rules of the LPC and she is of the opinion that the respondent's firm poses a risk to clients.

FIT AND PROPER PERSON TO CONTINUE PRACTISING:

⁹ It is also an offence rendering such a practitioner liable to a fine and/or imprisonment in terms of Section 93(8) of the LPA

- [14] The question that faces this Court is whether or not the respondent is a fit and proper person to continue practising and whether he should remain suspended as per the order of Ranchod J or whether he should be struck off the roll.
- [15] An attorney must scrupulously observe and comply with the provisions of the Attorneys' Act and the Rules promulgated thereunder, the LPA, the Rules and the Code of Conduct promulgated thereunder.¹⁰
- [16] The facts upon which the Court's discretion is based should be considered in their totality and the Court must not consider each issue in isolation.¹¹ Although the Court is not bound by it, the opinion of the LPC that a practitioner is no longer a fit and proper person to practise as an attorney carries great weight with the Court.¹²
- [17] Given the above complaints, the report from Ms Hlogoane and the three stage inquiry as referred to in [10] above it is clear that the respondent is not a fit and proper person to practice.
- [18] An attorney's duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty. Where trust money is paid to an attorney it is his duty to keep it in his possession and to use it for no other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have

¹⁰ The Attorneys Act and Rules have been repealed

¹¹ *Law Society, Cape of Good Hope v Segal* 1975 (1) SA 95 c at 99 B; *Beyers v Pretoria Balie Raad* 1966 (2) SA 593 (A) at 606 B; *Prokureursorde van Transvaal v Kleynhans supra*; *Malan v The Law Society of the Northern Provinces supra*

¹² *Kaplan v Incorporated Law Society, Transvaal* 1981 (2) SA 762 (T) at 781 H; *Die Prokureursorde van die Oranje Vrystaat v Schoeman* 1977 (4) 588 (O) at 603 A - B

available liquid funds in an equivalent amount. The very essence of a trust is the absence of risk. It is imperative that trust money in the possession of an attorney should be available to his client the instant it becomes payable. Trust money is generally payable before and not after demand.¹³ The respondent's misappropriation of trust funds is inherently dishonest and is criminal.¹⁴

[19] The respondent's continued practice without a Fidelity Fund Certificate is serious and contravenes section 84(5) of the LPA. It exposes his clients to risk, is contrary to the peremptory provisions of the LPA and is an offence rendering him liable to a fine and/or imprisonment. Further aggravating factors such as the respondent's failure to submit his statutory auditor's report, his failure to produce his account records for inspection by the LPC in contravention of section 87(5) of the LPA, his failure to pay a fine imposed upon him¹⁵ and his failure to reply to correspondence addressed to him by the LPC¹⁶ are all indicative of the fact that the respondent simply refuses to be regulated.

[20] The profession to which the respondent has been admitted requires that he at all times acts with the utmost good faith (*uberrima fides*) not only towards his clients but towards the profession as a whole.¹⁷ He does this by ensuring that

¹³ *Law Society, Transvaal v Matthews supra* at 394; *Incorporated Law Society, Transvaal v Visser and Others*; *Incorporated Law Society Transvaal v Viljoen* 1958 (4) SA 115 (T) at 118 F – H; *Incorporated Law Society, Transvaal v Behrman* 1977 (1) SA 904 (T) at 905 H

¹⁴ The respondent's trust deficit is in contravention of Rule 54.12, 54.13, 54.14.8 and 54.14.10 of the LPC Rules

¹⁵ His failure to pay the fine or any portion thereof on the stipulated dates constitutes a contravention of Rule 3.16 and 10.3 of the Code of Conduct

¹⁶ An attorney who fails to reply to communications contravenes Rule 10.1 to 10.3 of the Code of Conduct. Such contravention further amounts to misconduct in terms of Rule 13 of the Code of Conduct

¹⁷ *Heppell v The Law Society of the Northern Provinces* 2017 JDR 1612 (SCA) at par 12

he, at all times, complies with the Rules to which he has sworn an allegiance when he took the oath of office.

- [21] By abandoning and/or closing his practice without prior written notice to his clients and the LPC as required by 18.4 and 18.5 of the Code of Conduct, by absconding from his office with his clients' monies, by refusing to account to his clients and by demonstrating a complete disregard for the requests to produce his account records and reply to complaints received it is clear that the respondent is incapable of acting in good faith or with the required integrity that the profession demands of him. Wallis JA, in *General Council of the Bar of South Africa v Geach & Others*¹⁸ remarked as follows regarding what is expected and demanded of Officers of the Court:

"After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard won freedoms is without parallel. As Officers of our Courts, lawyers play a vital role in upholding the Constitution and ensuring that our system of justice is both efficient and effective. It therefore stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them. It follows that generally a practitioner who is found to be dishonest must surely in the absence of exceptional circumstances expect to have his name struck from the Roll."

- [22] Having regard to the totality of the facts in this matter, the only order that is justifiable under the circumstances is to remove the respondent's name from the roll of attorneys. Given that substituted service was ordered by Ranchod J

¹⁸ 2013 (2) SA 52 (SCA) at par 87

because of the challenges experienced in serving the application on the respondent, it would be prudent to make such an order again.

COSTS:

[23] A costs order is sought on an attorney and client scale. The LPC approached this Court in its capacity as *custos morum* of the profession. The LPC did not approach the Court as an ordinary litigant but is under a public duty in circumstances where the respondent has failed to comply with his lawful obligations. In the circumstances, the LPC should be fully indemnified for its costs.¹⁹

[24] The award of attorney and client costs in these matters is not punitive. It has been crystalised over many years as the appropriate order in circumstances where the LPC ought to be reimbursed to the full extent possible. The general rule is that the LPC is entitled to its costs, even if unsuccessful, and usually on an attorneys and client scale. I find no reason present in this matter to deviate from the general rule.

ORDER:

[25] In the result the following is ordered:

¹⁹

Botha v Law Society of the Northern Provinces 2009 (1) SA 227 (SCA) at 236 F

- [1] That the name of RAMERE SIMON MAMETJA ("the respondent") be struck off the roll of legal practitioners of this Court.
- [2] That the respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Court.
- [3] That in the event of the respondent failing to comply with the terms of this order detailed in [2] above within 2 (two) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.
- [4] That the respondent be prohibited from handling or operating on his trust accounts as detailed in [5] hereunder.
- [5] That Mr Johan van Staden, the Head: Members Affairs of the 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 the respondent's practice as attorney and including, also, the separate banking accounts opened and kept by the respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act 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 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 the respondent's accounting records, records, files and documents as referred to in [6] hereunder 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;
- [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 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);

- [5.3] to ascertain from the respondent's accounting records the names of all persons on whose account the respondent appears to hold or to have received trust monies (hereinafter referred to as "trust creditors") and to call upon the 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 the respondent and, if so, the amount of such claim;
- [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' rights 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 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 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 [11] hereunder, 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 the respondent is insolvent, to the trustee(s) of the respondent's insolvent estate;
- [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;
- [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 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.
- [6] That the 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 the respondent for or on account of any person while practising as an attorney;
 - [6.2] any monies invested by the respondent in terms of section 78(2) and/or section 78(2A) of Act 53 of 1979;
 - [6.3] any interest on monies so invested which was paid over or credited to the respondent;
 - [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;

- [6.5] any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, 24 of 1936;
- [6.6] any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, 57 of 1988;
- [6.7] any company liquidated in terms of the Companies Act, 61 of 1973, administered by the 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 the respondent as or on behalf of the liquidator; and
- [6.9] the respondent's practice as an attorney of this Court, to the curator appointed in terms of [5] above, 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.
- [7] That should the respondent fail to comply with the provisions of [6] 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.

[8] That the respondent be and is hereby removed from office as –

[8.1] executor of any estate of which the respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, 66 of 1965 or the estate of any other person referred to in section 72(1);

[8.2] 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, 66 of 1965;

[8.3] trustee of any insolvent estate in terms of section 59 of the Insolvency Act, 24 of 1936;

[8.4] liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, 61 of 1973;

[8.5] trustee of any trust in terms of section 20(1) of the Trust Property Control Act, 57 of 1988;

[8.6] liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, 69 of 1984;

[9] That the curator shall be entitled to:

[9.1] 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;

[9.2] require from the persons referred to in [9.1] above 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;

[9.3] publish this order or an abridged version thereof in any newspaper he considers appropriate wind-up of the respondent's practice;

[9.4] 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.

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

[11] That the respondent be and is hereby directed:

[11.1] to pay, in terms of section 78(5) of Act 53 of 1979, the reasonable costs of the inspection of the accounting records of the respondent;

[11.2] to pay the reasonable fees and expenses of the curator;

[11.3] to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

[11.4] to pay the expenses relating to the publication of this order or an abbreviated version thereof;


[12] The applicant is to:

[12.1] serve a copy of this order on the respondent by way of publication of an abridged version hereof in one edition of the Sowetan Newspaper and one edition of the Star Newspaper;


[12.2] send a copy of this order to the respondent's last known email address, ramere@telkomsa.net and rsmametja@telsomsa.net; and

[12.3] inform the respondent of this order by way of SMS to the respondent's last known cell phone number 076 376 9939.

[13] The respondent is to pay the costs of the application on an attorney and client scale.


 LC HAUPT
 ACTING JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

I agree


 B NEUKIRCHER
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

Date of hearing: 20 August 2020

Date of judgment: 17 December 2021

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be 17 December 2021

Legal representatives:

FOR THE APPLICANT: L Groome (Attorney with right of appearance ito section 4(2) of Act 69 of 1995
INSTRUCTED BY: Rooth & Wessels Inc
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FOR THE RESPONDENT: No papers filed