



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

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE: 03 JULY 2024

SIGNATURE:.

Case No: 24543/2022

In the matter between:

THE SA LEGAL PRACTICE COUNCIL

APPLICANT

And

SOLOMON MALEBOGO MAEYANE

RESPONDENT

Coram: **JUDGE JANSE VAN NIEUWENHUIZEN**
 ACTING JUDGE KEKANA

Heard on: 21 May 2024

Delivered: 03 July 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system.

JUDGMENT

AJ KEKANA (JUDGE JANSE VAN NIEUWENHUIZEN CONCURRING)

SUMMARY

[1] This is an application brought by the Legal Practice Council (LPC) for the removal of the Respondent's name from the roll of legal practitioners, alternatively, for the suspension of the Respondent from practice as a legal practitioner, pending the removal of his name from the roll of legal practitioners.

[2] On 27 July 2023, the Respondent was suspended from practice as a legal practitioner, pending the finalisation of the application for the removal of his name from the roll of legal practitioners. The court issued a rule *nisi* calling upon the Respondent to show cause on 01 February 2024, why his name should not be removed from the roll of legal practitioners. At the hearing of the matter on 01 February 2024, the rule *nisi* was extended to 21 May 2024. The Applicant was afforded an opportunity to reply to the Respondent's supplementary answering affidavit.

[3] The Respondent was admitted and enrolled as an attorney of this Honourable Court on 11 April 2005. He practised as an attorney in various capacities and at various law

firms during the period 11 April 2005 to 17 July 2012. The Respondent was a non-practising member of the Applicant for the period 12 July 2013 until 18 August 2013. He commenced practising as a sole practitioner under the name and style of Maeyane Attorneys with effect from 19 August 2013.

[4] According to the evidence presented by the Applicant, the Respondent is a practising attorney who is neither admitted nor enrolled as a conveyancer as such does not have the requisite authority to attend to the transfer of immovable properties. Only an attorney who is a qualified, admitted and enrolled as a conveyancer has the authority to do so. There are numerous complaints against the Respondent, the majority of which had to do with the Respondent having to attend to the transfer of immovable properties.

[5] The complaints against the Respondent that relates to the transfer of immovable properties can be summarised as follows:

- 5.1 Mr Jairos Marina – he instructed the Respondent to attend to the transfer of immovable property into his name. The Respondent failed to execute the mandate given to him and attempts to contact the Respondent proved fruitless. The Respondent failed to invest the purchase price and transferred funds to the seller prior to registration of the property.
- 5.2 Mr Nkosinathi Nicolas Shongwe – he instructed the Respondent to attend the registration of an immovable property in his name. He effected payment of the purchase price as well as the transfer fees in the total of R335 170.00, into the Respondent's firm's trust account. The transfer never took place and upon being contacted the Respondent mentioned

the discovery of irregularities and blamed a certain Ms Compaan who was employed in the Respondent's firm.

- 5.3 Leeuwner Maritz Attorneys on behalf of B H Janse van Rensburg Trust – instructed the Respondent to attend to the registration of the property into the name of the of the Trust. The amount of R1 387 485.00 being the purchase price was paid into the Respondent's firm's trust account; however, the Respondent has failed to execute the mandate given to him. In his response the Respondent again mentioned the discovery of fraudulent activities and irregularities on matters handled by Ms Compaan. The purchase price was never invested in an interest-bearing account.
- 5.4 Ms Nthabiseng Jacqueline Serite – she instructed the Respondent to attend the registration of immovable property into her name. She effected payment of the purchase price, of R380 000.00, into the Respondent's firm's trust account with specific instructions for same to be invested in terms of section 86(4) of the Legal Practice Act., 28 of 2014. Again, Ms Compaan is mentioned by the Respondent as the person who failed to inform the Respondent to invest the trust funds on behalf of the complainant.
- 5.5 Mr Sibusiso Kekana – he instructed the Respondent to attend to the transfer of immovable property into the name of the purchasers. The Respondent failed to furnish the complainant with a progress report regarding the status of the transfer. As a result of the Respondent's failure to execute the mandate given to him, the parties cancelled the

transaction. The Respondent failed to refund the purchase price in favour of the purchaser and to furnish the complainant with a statement of account for wasted costs. The complainant indicated that all his attempts to contact the Respondent have proven fruitless. The purchase price of R1 069 713.05, which was paid into the Respondent firm's trust account on 06 July 2020, had not yet been refunded to them.

- 5.6 Mr Caldon Musawenkosi Sigasa – he instructed the Respondent to make enquiries at the Master's Office with regards to an abandoned immovable property which he was interested in purchasing. The attorneys attending to the deceased estate in which the immovable property was held, had advised him to make an offer on the immovable property. An offer of R80 000.00 was subsequently made and the offer was accepted by the attorneys acting on behalf of the deceased estate. The complainant proceeded to sell the property to a certain Ms Z. The purchase price for the property was R260 000.00. Ms Z effected payment of the purchase price as well as the transfer fees amounting to R275 856.05 into the Respondent's firm's trust account. The Respondent indicated that he was unaware of the said payment as Ms Compaan attended to the matter and she has since passed away. Proof of payment from Ms Z was furnished to prove that payment was made into the Respondent's firm's trust account, the Respondent failed to confirm the amount of money held in his firm's trust account on behalf of Ms Z.
- 5.7 Mr Jeremiah Kgauco Molusi – sold his immovable property and furnished the original title deed and other documents to the Respondent for the Respondent to proceed with the transfer of the immovable property into

the name of the purchaser. The transaction was cancelled, and the complainant went to the Respondent's offices to collect all his original documents. The complainant found that his documents, including the original title deed, were lost. Despite numerous attempts, the complainant has not been furnished with his title deed and feedback on the matter. The complainant ended up approaching Legal Wise to assist him with this matter.

- 5.8 Ms Madintja Sylvia Ngwenya – she instructed the Respondent to open a deceased estate bank account and to assist her with the administration of her late husband's estate. Instead of opening an estate bank account, the Respondent had all the monies due to the estate paid into his firm's trust account. The Respondent informed her that his fees would be 3,5% of the value of the estate. According to the complainant the value of the estate was in the region of approximately R415 000.00, as such the Respondent's fee would have been approximately R15 000.00; however, the Respondent charged a fee of R30 000.00. She has not received any proof of the payments made to settle her late husband's debts. Again, she instructed the Respondent to set up a trust fund for her two children, instead, the Respondent transferred the children's share, amounting to R140 000.00, into an account held at First National Bank. She further indicated that her eldest child turned eighteen in September 2019, and was supposed to receive her R70 000.00 share, but only received R64 000.00. The Respondent advised that the R6 000.00 deducted was for bank charges. According to her, her youngest son's share has still not been deposited into a trust fund and still remains in the First National

Bank account. She made numerous requests for the Respondent to settle the outstanding municipal account and furnished the Respondent with the notices issued by the municipality for the disconnection of the electricity, the Respondent has failed to effect payment thereof. At one stage the Respondent withdrew R30 000.00 for this purpose, but the municipal account remains unpaid.

5.9 Mr Surprise Pogiso Letlhake – he instructed the Respondent, through First National Bank Law on Call, to file an appeal against the finding of the South African Police Station, Meyerton on 11 August 2016, namely, that he was unfit to possess a firearm. Months after he had instructed the Respondent and not having received any progress reports, he contacted the Respondent and requested a meeting. During the meeting, the Respondent apologised for not filing the complainant's appeal within the required 90-day period. The Respondent undertook to engage the services of a certain Adv M to assist in the matter. He indicated that the Respondent only furnished him with correspondence after he had approached the Ombudsman. The complainant was given proof that his firearm had been destroyed. He is of the view that the Respondent should be held responsible for the costs of replacing his firearm as it is the Respondent who failed to execute the mandate given to him.

5.10 Mr Venter Tshabalala – he instructed the Respondent to assist him with an appeal in a labour matter. The complainant paid a total of R13 000.00 to the Respondent. According to the complainant the Respondent failed to execute the mandate instead the Respondent informed him that time

has lapsed, and that the Respondent was unable to proceed with the matter. He now claims repayment from the Respondent.

- 5.11 Mr Sithembiso Jackson Mwale – he also instructed the Respondent to assist him with an appeal in a labour matter. The complainant paid a total of R13 000 00 to the Respondent. According to the complainant the Respondent has failed to execute the mandate and then the Respondent informed the complainant that time has lapsed, and that the Respondent was unable to proceed with the matter. He now claims repayment from the Respondent.

REPORT BY HLOGOANA DATED 16 APRIL 2019

[6] The report can be summarised as follows:

- 6.1 A trust account bank statement dated 28 February 2018, reflected that the account held a credit balance of R1 133 635.36, as at 28 February 2018. A trust account bank statement as at the date of Hlogoana's visit reflected that the account held a credit balance in the amount of R1 450 567.31, as at 31 December 2018.
- 6.2 There was a trust deficit identified as at 31 January 2018 and 28 February 2018, on 30 August 2018. There were debit balances identified in the creditors listing.
- 6.3 That the Respondent was not updating the accounting records monthly.

Trust position

- 6.4 That the trust position as at 31 December 2018, reflected a debit balance of R0.71; however, it appears as though the auditor was still in the

process of updating the firm's accounting records and therefore the trust position cannot be relied on.

REPORT BY SWART DATED 04 FEBRUARY 2022

[7] The report can be summarised as follows:

7.1 There was a receipt from the trust relating to the purchase price plus the transfer costs amounting to R1 387 485.00, was recorded on 16 July 2020. Immediately after receipt of this amount, between the period 17 July 2020 to 31 July 2020, payments were effected against this account which reduced the trust balance of this account to an amount of R387 223.52. On 27 July 2020, a trust payment was made, identified as "Bridging" for R750 000.00. This is a highly irregular payment which in its own caused an immediate trust shortage of R750 000.00. A bridging payment is made by an attorney to the seller of the property only after a bridging finance contract has been concluded and the attorney has received the finance from the bridging financier into its trust banking account. This does not apply to this payment. The payment of R750 000.00 for bridging was for Fastfin and the firm is still attempting to establish for which file this was.

7.2 On 4 August 2020 a "PP" payment of R353 695.89, was made against this account, reducing the trust balance to R33 527.63. During September 2020 to November 2020, several "Fees" and "Comm" payments were made, which reduced the trust account balance to nil. The payment of R353 695.89, for "BLF" was for J A van Loggerenberg in the matter of Deyssel/Van Loggerenberg for file number L175.

- 7.3 That payments made by Ms Compaan in the trust ledger account were not justified.
- 7.4 That the incorrect posting of payments as mentioned herein above is a clear indication that Ms Compaan did not allocate the trust payments to the correct trust ledger accounts. She allocated the trust payments to trust ledger accounts where there were trust funds available to accommodate these trust payments.
- 7.5 As regards the complaint by Ms Serite, the receipt of the deposit on the purchase price amounting to R136 416.50, was recorded on 27 May 2020. From the date of receipt of this amount, payments were effected between the period from 27 May 2020 to 10 June 2020 against this account which reduced the trust balance of this account to R162.01.
- 7.6 That on 19 August 2020 and 25 August 2020, two trust payments were made, identified as "Stand 1118" for the total value of R82 523.57. These are highly irregular payments which on their own caused an immediate trust shortage of R82 523.57. These payments were made in respect of stand 118, whilst this ledger account is in respect of the sale of Holding 12, Kaydale Agricultural Holdings.
- 7.7 As regards the complaint by Mr C M Sigasa - the receipt of the purchase price plus the transfer costs amounting to R275 856.05 from Mr Zuma was recorded on 05 March 2020. Immediately after receipt of this amount, payments were effected between the period from 06 March 2020 to 19 March 2020 (within 14 days), against this account which reduced the trust balance of this account to an amount of R16.05. On 06

March 2020, two trust payments were made against this account identified as “PP” (purchase price) for a total amount of R252 920.00. This is therefore an indication of two payments to the seller of the property, Mr Sigasa. This is however incorrect, as Mr Sigasa stated in his complaint that no payments were made to him. The amount paid is also not correct, as the liability of Mr Sigasa of R80 000.00, plus costs for the purchase of his new property must be deducted from the amount payable to him. These two payments were therefore not made to Mr Sigasa and caused an immediate trust shortage.

7.8 That it is clear that, from the results of the incorrect postings to the trust ledger accounts, there were a number of incorrect postings on the matters which were attended to by the late Ms Compaan.

7.9 Swart is of the opinion that the Respondent does not have any control measures in place to identify if a client’s trust funds received by the firm could or should be invested for the benefit of the client. Also, that the controls performed by the Respondent were not on a standard that is expected from a legal practitioner with employees who are allowed to process financial transactions against clients’ trust funds.

CONTRAVENTIONS

[8] The Applicant lists numerous contraventions by the Respondent, these includes contravention of provisions of the Legal Practice Act, the LPC Rules and the Code of Conduct for Legal Practitioners.

[9] As regards the merits of the case before this Court vis-à-vis the complaints levelled against the Respondent, his response is as follows:

- 9.1 As regards the transfer of immovables properties, the Respondent argues that an attorney is permitted to take instruction to transfer an immovable property to later hand over the file to a conveyancer.
- 9.2 Regarding the misappropriated funds in the trust account the Respondent blame Ms Compaan for the irregularities and transactions that took place and alleges that he was not aware of these irregularities done by Ms Compaan. The Respondent goes on to further, allege that he only became aware of all these irregularities in 2021 after Ms Compaan passed away, as he was receiving complaints from clients.
- 9.3 As regards the amounts of R13 000 00 made by Mr Mwale and Tshabalala for the Respondent to assist them in their labour matter, the Respondent states that the R3000 00 was consultation fee and the amounts R10 000 00 was paid to Adv. M who provided an opinion on the matter.
- 9.4 In its supplementary heads of arguments the Respondent also registers its complaint against the LPC, stating that there was no investigation by the LPC against him, secondly that he was never subjected to any disciplinary hearing by the Disciplinary Committee.

[10] I will deal with the issue of the Respondent rendering services of a conveyancer while he is not admitted nor enrolled as one. According to evidence presented before this Court, there was no engagement letter between the Respondent and all the clients

which was explaining his scope of services neither could the Respondent adduce evidence of an engagement letter between himself and the purported conveyancer. Evidence before this Court shows that all payments made by clients were made into the trust account of the Respondent and not into the account of any conveyancer. These payments from clients should have been made into the trust account of the conveyancer if as the Respondent claims his role was that of an agent securing clients for and on behalf of the conveyancer. That the Respondent had control of the funds one can conclude that the Respondent misrepresented himself to the clients as a conveyancer and capable of rendering the services of a conveyancer. This I can conclude amounts to dishonesty.

[11] Evidence before me shows that the Respondent was dishonest with clients, misrepresenting himself to clients as a conveyancer who can render conveyancing services hence the multiple clients, he was able to secure. As a result of his dishonesty, many members of the public suffered with some suffering financially. Dishonesty in the legal profession is viewed seriously. The Supreme Court of Appeal has also stressed that the profession of an attorney is an honourable one and as such 'demands complete honesty, reliability and integrity from its members'¹.

[12] In the case of ***South African Legal Practice Council v Bobotyana***², the court further remarked that where an attorney has been found to have acted dishonestly a court will not lightly conclude that striking off is not a fitting sanction. The case before me is worse in that it did not only include the Respondent using and trading wrongfully the designation of a conveyancer while not qualified and enrolled as one, but the said

¹ *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G.

² [2020] 4 All SA 827 (ECG).

dishonesty by the Respondent of misrepresenting himself resulted in the misappropriation of funds. South African courts have held that an attorney who dishonestly misappropriates trust funds is not a fit and proper person to continue practising as an attorney and deserves the ultimate sanction of strike-off³. The Respondent contravened clause 3.1 of the Code of Conduct in that he failed to maintain the highest standard of honesty and integrity.

[13] During the hearing the Respondent was able to provide this Court with the name of the conveyancer who was allegedly used in the transfer of these immovable properties. One can therefore conclude that the Respondent was the one taking these instructions and was aware of the payments made. That the payments were made into the Respondent's account and trust account can only mean that the alleged conveyancer was only used to lodge papers with the Deeds Registry.

[14] I now turn to the complaints by Mwale and Tshabalala. Evidence before me shows that the Respondent was unable to produce proof of the alleged opinion, he allegedly sourced from an advocate neither could he produce evidence proving any payment he alleges was made to the advocate. The Respondent also failed to answer the correspondence addressed to him by the Applicant in this regard. In ***Hepple and Others v The Law Society of the Northern Provinces***⁴, the Supreme Court of Appeal confirmed that the proceedings in applications to strike attorneys from the roll are not ordinary civil proceedings but that they are proceedings of a disciplinary nature and are *sui generis*. The court confirmed the duty resting on an attorney in these kinds of proceedings in the following dictum:

³ *Law Society of the Free State v Le Roux and Others (FB)* (unreported case no 3039/2014, 30-11-2015).

⁴ 2014 (3) All SA 408 (SCA) at para 9.

“It follows, therefore, that where allegations and evidence are presented against an attorney, they cannot be met with mere denials by the attorney concerned. If allegations are made by the Law Society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside; the attorneys are expected to respond meaningfully to them and to furnish a proper explanation of the financial discrepancies as failure to do so may count against them.”

[15] While the case cited above dealt with financial discrepancies, this responsibility extends to any allegation levelled against an attorney. The Respondent in the present case has the responsibility to provide this court with evidence to counter or refute allegations against him, in this instance the Respondent failed to do so.

[16] There were several complaints against the Respondent for his failure to carry out client's instructions, the complaints Messrs Letlhake and Kekana refers. The Respondent contravened clause 16.1 of the Code of Conduct in that he failed, within a reasonable time, to reply to all communications which require an answer unless good cause for refusing an answer exists.

[17] I now turn to the issue of misappropriate funds in the trust account and the blame the Respondent places on Ms Compaan. It is the Respondent who owns the practice, it is the Respondent who is entrusted with the responsibility by the profession over the management of the trust account and it is the Respondent who is expected to understand the importance thereof and to not expose the trust account to any form of risk.

[18] The Respondent cannot now claim to be an innocent victim putting all the blame on Ms Compaan for the irregularities that took place in the trust account. Nonetheless, assuming of course without concluding that Ms Compaan was the one who committed the irregularities, that does not relieve nor exonerate the Respondent from his professional responsibility in respect of the management of the trust account.

[19] I'm of the view that the Respondent's actions were deliberate in that he consciously decided to expose the trust account to someone not trained and turned a blind eye to what was happening in the account. The Respondent's actions in allowing Ms Compaan access to the trust account granting her the authority to transact in the manner she did, amounts to serious gross negligence.

[20] The Respondent should have had oversight over the account particularly as there were huge sums of monies paid by clients and deposited into the trust account. Because of the Respondent's gross negligence clients were prejudiced, suffering huge financial losses. The losses suffered by clients caused irreparable damage to the image of the legal profession. The Respondent contravened section 87(1)(b) of the Act read together with Clause 3.8 of the Code of Conduct in that he did not keep proper accounting records to account faithfully, accurately and timeously for any of his clients' money received, held or paid on account of any person. What makes it worse is that the Respondent was not quite forthcoming in admitting the role he played in these multiple irregularities. Also, he contravened clause 18.3 of the Code of Conduct in that he failed to exercise proper control and supervision over his staff and office.

[21] There were several adverse findings on the trust account as captured in the Swart report which I don't intent to repeat here as they are dealt with thoroughly in para 7

above. As mentioned in ***Summerley v Law Society Northern Provinces***⁵, the fact that a court finds that an attorney is unable to administer and conduct a trust account does not mean that striking-off should follow as a matter of course. The converse is, however, also correct: it does not follow that striking-off is not an appropriate order⁶.

[22] The contention by the Respondent that there was no investigation conducted by the PLC is not merited as the PLC itself made several enquiries on the complaints to which the Respondent opted not to reply to but most importantly there was an investigation which generated the Swart report referred to in para 7 above which made several adverse findings against the Respondent.

[23] Our courts have consistently applied, and it has become settled law, that the application of section 22(1)(d) involves a threefold enquiry:

- (a) Firstly, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry.
- (b) Secondly, it must consider whether the person concerned 'in the discretion of the court' is not a fit and proper person to continue practice. This involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment.
- (c) Thirdly, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys, or whether an order of suspension from practice will suffice.

[24] I find that the Applicant was able to present evidence demonstrating various contraventions of the of provisions of the Legal Practice Act, the LPC Rules and the

⁵ 2006(5) SA 613(SCA) at para 15.

⁶ *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 at para 11.

Code of Conduct for Legal Practitioners by the Respondent. I'm of the view that the Respondent is not a fit and proper person to continue practice.

[25] As regards the discretion by the court it was held in **Naylor v Jansen**⁷ that in exercising this discretion the court is not bound by rules, and precedents consequently have a limited value. All they do is to indicate how other courts have exercised their discretion in the circumstances of a particular case. Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a court were bound to follow a precedent in the exercise of its discretion it would mean that the court has no real discretion.

[26] As regards whether the Respondent is a fit and proper person, I agree with counsel for the Applicant that in the case of **Hassim v Incorporated Law Society of Natal** at 767C-G, that the Applicant, as *custos morum* of the profession merely places facts before the Court for consideration⁸. The question whether a legal practitioner is a fit and proper person is not dependent upon factual findings but lies in the discretion of the Court⁹.

[27] In the present case I find the conduct of the Respondent so grave, he has caused irreparable damage to the profession and its image. He has broken the trust that should be there between an attorney and the public. As such the Respondent cannot be permitted in any form to practice as an attorney of this Court.

I therefore make the following order, that:

⁷ 2007 (1) SA 16 (SCA) at para 21.

⁸ 1977(2) SA 757(A). See also *Law Society Transvaal vs Matthews* 1989(4) SA 389(T) at 393 E.


⁹ *Law Society of the Cape of Good Hope vs C* 1986(1) SA 616(A) at 637 C – E.

1. The respondent be struck from the roll of attorneys.
2. Respondent is ordered to pay the costs of this application on the scale as between attorney and client.



KEKANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED



JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

DATES HEARD:

21 May 2024

DATE DELIVERED

03 July 2024

APPEARANCES

For the Applicant: Ms Moolman

Instructed by: Damons Magardie Richardson Attorneys

For the Respondent: Advocate ME Ngoetjana

Instructed by: Malebogo Maeyane Attorneys