REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 34484/2017
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE9/6/25
SIGNATURE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

MANDLA MACBETH NCONGWANE First Respondent

MACBETH ATTORNEYS INCORPORATED Second Respondent

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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 9 June 2025.

Summary: Application to strike a legal practitioner off the roll of legal practitioners – not fit and proper. Absent any accounting, an inference must be drawn that the practitioner has misappropriated trust funds. Funds kept in a money market account in the name of the legal practitioner's law firm are not funds kept in terms of section 78(2A) of the old Act and section 86(4) of the new Act. A practitioner who misappropriates trust funds is unfit and improper to remain on the roll of legal practitioners. The application was ripe to be determined by this Court, given the *sui generis* nature of the application. Application succeeds and draft order adopted as order of Court.

JUDGMENT

CORAM: MOSHOANA, J (FRANCIS-SUBBIAH, J CONCURRING)

Introduction

[1] In South Africa, a person shall not be admitted and enrolled as a legal practitioner unless he or she is a fit and proper person to be so admitted. Section 24(1) of the Legal Practice Act (LPA)[1] provides that a person may only practice as a legal practitioner if he or she is admitted and enrolled as such in terms of the Act. These legal requirements simply imply that inside the circle of legal practitioners, resides only fit and proper persons. Once a person loses the characteristics of being fit and proper, he or she ought to be spewed out of the circle because he or she becomes a square peg in a round hole. Effective lawyering takes a great deal of patience, diligence, hard work, systematic drilling and strategy, and always a measured temperament. There are no shortcuts, no instant gratification and no guaranteed wealth - only diligence and sheer hard work. Almost always, there will be

[1] Act 28 of 2014 as amended.

satisfaction for a job well done and one will earn the respect of one's clients and colleagues by reason of adherence to professional standards and integrity.[2]

[2] The enquiry before a Court called upon to exercise the power to strike a practitioner's name from the roll, the veritable question is not whether the sentence fits the crime but whether the public shall, by the striking off, be protected in the future or not. The ultimate question is whether it is appropriate to permit a legal practitioner to continue to practice despite being an unfit and improper person.

[3] In determining whether a legal practitioner has misappropriated trust funds, 'it matters not whether the legal practitioner received any personal benefit from taking the funds. Nor does it matter that the legal practitioner intended to or did return the funds in short order, that he or she was acting in response to severe personal financial pressures, or that the amount of money taken was relatively small'.[3]

[4] More recently, the Supreme Court of Appeal, in the matter of *South African Legal Practice Council v Kgaphola and Another* (*Kgaphola*),[4] expressed itself in the following terms:

> "[19] The proper approach to misconduct complaints against legal practitioner is well-established and has been applied in many cases. It is a three-stage enquiry. First, a court determines whether the complaint has been established on a balance of probabilities. This is a factual enquiry. If established, the court enquires whether the practitioner is fit to remain on the roll of legal practitioners. If he or she is not, the court must, in the third stage, determine a sanction: whether the legal practitioner's name should be removed from the roll or merely be suspended from practice for a determinate period. In the second and third stages, a court exercises discretion." [footnotes omitted].

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[2] Slabbert "The requirement of being a "fit and proper" person for the legal profession" (2011) vol. 14 *PER* 209 quoting Pityana as Principal and Vice Chancellor, UNISA in an address to the Black Lawyers Association (BLA) 30th Anniversary 9 November 2007.
[3] See *Gellert (Re)*, 2013 LSBC 22 (CanLII) at para 72.
[4] [2025] ZASCA 66.

[5] In the present application, although the applicant, the South African Legal Practice Council (SALPC) exposed to the Court about six acts of misconduct,[5] the one relating to Ms. Wezi Beverly Jumbe (Ms. Jumbe) is the most serious one, since it involves allegations of misappropriation of trust money. In this judgment, most attention shall be paid to Ms. Jumbe's complaint.

[6] It is the Ms. Jumbe's complaint that produced not less than five judgments of this Court, since the year 2012. For the purposes of this judgment, the litigious history of the present application shall not be considered. Such history is littered in various judgments of this Court. It will serve no purpose other than elongating this judgment. In this judgment, the three-stage enquiry shall be engaged in since the SALPC now seeks an order striking Mr. Mandla Macbeth Ncongwane (Mr. Ncongwane) from the roll of legal practitioners.

[7] The present application agitates the question of whether the respondent, Mr. Ncongwane, is a fit and proper person to be allowed back to the vulnerable members of the public, who are consumers of legal services, as a legal practitioner. Differently put, now that, by virtue of his misfeasance, he has become a square peg, can this Court possibly return him to the round hole?

Background facts pertinent to the application

[8] Mr. Ncongwane is an admitted legal practitioner, who practices as an attorney under the name and style of Macbeth Attorneys Incorporated, the second respondent in the present application. Ms. Jumbe was involved in a motor vehicle accident on 4 November 2006. She sustained very serious injuries. She engaged the services of Mr. Ncongwane to institute a delictual action against the Road Accident Fund (RAF). Dutifully, Mr. Ncongwane carried out the instructions. The RAF made various offers attempting to settle the claim.

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[5] Ms. Jumbe's complaint; Mr. Christo Smith's complaint (contempt of court orders); Ms. Mosehla's complaint (neglected the affairs of client); Ms. Mkhwanazi's complaint (accepted offer without instructions); Mr. Ndzimande's complaint (failure to answer); Kruger Moeletsi Attorneys' complaint (failure to account and discover benefits money).

[9] On or about 14 September 2012, an offer of payment of an amount of R 5 139 152, including a section 17(4) undertaking was made in favour of Ms. Jumbe. Upon consultation with counsel, the offer of payment was not accepted. On 29 November 2012, a revised offer of payment of R 5 432 784 was again made. This offer was accepted. On 12 December 2012, the amount was paid into the trust account of the firm of Mr. Ncongwane. At the time when the offers were made and accepted, the trial date was set on 24 May 2013.

[10] On 24 May 2013, the action of Ms. Jumbe came before the trial roll Court beaconed by the Deputy Judge President (DJP) of the Division. On that day, an order was made that (a) the net proceeds of the payments due to Ms. Jumbe after the deduction of attorney and own client costs shall be payable by Mr. Ncongwane to a trust to be created within 12 months of the date of the order; (b) the trust deed already drafted was to be signed within 30 days of the order; (c) the objectives of the trust be the controlling and administration of the capital amount on behalf of Ms. Jumbe; (d) have as its trustees, Mr. Ncongwane, Ms. Sibongile Chimimba, and Mr. Friday Jumbe; (e) should a trust not be created within 12 months, the court must be approached within one month thereafter in order to obtain further directives in respect of the manner in which the capital amount is to be utilised in favour of Ms. Jumbe; (f) pending the appointment of trustees to take control of the capital amount, Mr. Ncongwane was authorised to invest the amount in terms of section 78(2A) of the repealed Attorneys Act; (g) other than any reasonable payments to satisfy any of Ms. Jumbe's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim, Mr. Ncongwane was prohibited from dealing with the capital in any other manner unless specifically authorised by the Court.

[11] Despite the Court orders outlined above, various payments were made from the capital funds, ranging from a R 30 000 loan allegedly made to Ms. Jumbe, R 25 000 paid towards the trip and hotel expenses in Malawi, R 100 000 payment made to Forex; and various Ewallet payments; payments to House and Homes Furniture and

Boardmans.[6] Following the turn of events relating to payments, one attorney, Mr. Cloete, intervened on behalf of Ms. Jumbe and approached the Court on 4 November 2016 for an order appointing a *curator ad litem* on behalf of Ms. Jumbe. Ultimately, the appointed curator, Advocate Nel, launched urgent applications against Mr. Ncongwane.

[12] Of pertinence is the order made by Molahlehi AJ, as he then was. Amongst other orders, the learned judge instructed the predecessor of the applicant to investigate the financial affairs of the law firm. Such an instruction saw the predecessor resolving to obtaining an order seeking a suspension of Mr. Ncongwane. Around 2017, an application was launched seeking a suspension. An order suspending Mr. Ncongwane was not obtained, instead, one Mr. Vincent Farris was dispatched by the predecessor to investigate the allegations. Owing to the insufficiency of records, Mr. Farris could not give a conclusive report (Farris report).

[13] Of pertinence to the present application is that, on or about 13 March 2013, an amount of R 4 000 000 was transferred from the trust account of the firm to a money market account. For a period from 13 March 2013 to September 2016, an amount of R 3 909 255.04 was withdrawn from the money market account. According to Mr. Ncongwane, the money market account was the section 78(2A) of the old Act account. The SALPC disagrees and contends that the account was a transactional account and was not opened in the name of Ms. Jumbe as required by the section. As of 30 September 2017, according to Mr. Farris, the balance in that account was R 665 458.47.

[14] The Farris report further revealed that an amount of R 473 400.99 was paid by the RAF in respect of costs. Only R 149 587.54 was paid into the money market account. The balance remained in the trust banking account. The Farris report concluded that there was no proper accounting made in respect of Ms. Jumbe. He also concluded that even if a valid contingency fee arrangement was entered into, the fee entitlement would have been R 1 168 048.56. The Farris report, other than calling for the debatement of the accounts, concluded that the firm contravened

[6] A list of payments from 15 June 2012 up to 12 March 2017 is annexed and marked “MMN11”.

section 86(4)(a) of the LPA as well as section 87 thereof read with rules 35.5 and 35.9 of the new rules. Section 86(4)(a) was contravened because the firm failed to account to the client. As a parting shot, Mr. Farris opined that the Legal Practice Fidelity Fund continues to be at risk. Mr. Ncongwane and his legal team accepted the Farris report to be legal. The other reports were rejected.

[15] Ultimately, on 04 June 2024, this Court, beaconed by Madam Justice Basson and Acting Justice Spunzi, entertained the application seeking to suspend Mr. Ncongwane from practising. The full bench was satisfied that a case for suspension was made. Resultantly, Mr. Ncongwane was suspended pending the finalisation of the application for the removal of his name from the roll of legal practitioners. On 28 November 2024, Mr. Ncongwane was to show cause why his name should not be removed from the roll of legal practitioners. Various other orders relating to the filing of supplementary affidavits were also made. This, notwithstanding, the parties failed to supplement their papers within the period ordered. Instead, Mr. Ncongwane proceeded with applications seeking to appeal and stay the operation of the order of 4 June 2024. All such applications were dismissed. On 28 November 2024, this Court extended the *rule nisi* and further afforded the parties an opportunity to file supplementary affidavits. Only the SALPC grabbed that opportunity. Mr. Ncongwane, again, failed to supplement his papers, instead, he sought to divert this application to the process of the Ombud. He asked that the experts should meet and produce joint minutes before the matter could return to Court. The SALPC refused to meet the ask.

[16] Ultimately, on 22-23 May 2025, the present application emerged before us. We were told about an application for a postponement, which application was not moved by Mr. Ncongwane's counsel or legal team. Instead, a unique and unprocedural ask was made for this Court to find that the application was not ripe for a hearing. Further, an ask was made that a conditional supplementary affidavit encapsulating a report by Mr. Ncongwane's auditor be submitted. After listening to argument for and against these asks, this Court reserved its rulings. Regarding the ask for submission of the conditional supplementary affidavit accompanied by an auditor's report, counsel for Mr. Ncongwane conceded that the report of Mr. Reddy states that it is inconclusive because of lack of documentation, as such, the unrevealed auditor's

report will have nothing to counter. After hearing all the relevant submissions, this Court reserved its judgment. In this judgment, issues relating to these asks shall be dealt with.

Analysis

[17] Before this Court engages in the three-staged enquiry, it must deal with the preliminary asks first. At the commencement of the hearing of the application, counsel for Mr. Ncongwane argued that the application was not ripe for a hearing and this Court must extend the *rule nisi* to August 2025 and order that the application be transferred to the Mpumalanga Division of the High Court. Such was resisted by the SALPC.

Is the application ripe for hearing?

[18] First and foremost, this is an application *sui generis*. The SALPC does not serve as a notional applicant. It is a statutory body that is obligated to bring to the attention of this Court, the conduct of legal practitioners for censure and or discipline. Both the legal practitioner and the SALPC must bring facts to a Court to exercise its disciplinary powers. To my mind, the doctrine of ripeness finds no application in applications of this nature. What finds application is the common law principle of *audi alteram partem*.

[19] The doctrine of ripeness is well developed in American Law. In the matter of *Pacific Gas Electric Co v State Energy Resources Conservation and Development Commission* (*Pacific*),[7] the United States Supreme Court, held that the rationale behind the ripeness requirement is to enable courts to avoid becoming entangled in abstract disagreements with other branches of government. Further, it held that in deciding whether to apply the doctrine as a bar to consideration of the merits of a case, the courts have considered the hardship to the parties of withholding court consideration.

[7] 461 US 190 (1983).

[20] The doctrine of ripeness has also been considered by various courts in South Africa, pre and post the Constitution. As a culmination, in *Permanent Secretary, Department of Welfare, Eastern Cape, and Another v Ngxuza and Others* (*Permanent Secretary*),[8] the erudite Cameron JA expressed disapproval of the conduct of the respondent, who raised every stratagem and device and obstruction, every legal argument and non-argument that it thought lay to hand, including contradictory arguments as to ripeness and mootness.

[21] In *casu*, Mr. Ncongwane was afforded an opportunity to submit a supplementary affidavit. He, for reasons that are not apparent, spurned that opportunity. Thus, it does not avail to him to, having spurned the opportunity, to raise ripeness as a stratagem. *Permanent Secretary*[9] has already expressed disapproval of such stratagem. In *Kgaphola*,[10] the SCA dismissed an application for a postponement of an appeal with an order of punitive costs. Like the present ask, the ask was made from the bar with no substantive application in support of the ask.

[22] The ask for application of the doctrine of ripeness was predicated on four grounds; namely, (i) the compliance with the Ombud process; (ii) the need for the exchange of affidavits; (iii) lack of jurisdiction; and (iv) pending appeal against the order of 4 June 2024. Briefly, this Court shall consider all these grounds *ad seriatim*.

The compliance with the Ombud process

[23] In seeking to persuade this Court, Mr. Shakoane SC referred to the provisions of sections 46, 47 and 48 of the LPA. In addition, he referred to correspondence sneaked unprocedurally, as it were, where the Ombud was critical of the approach of the SALPC. This Court takes a view that the power to discipline legal practitioners is that of a Court. Now that this Court is seized with the matter, no other statutory body can wrestle, as it were, the matter out of the hands of a Court. Accordingly, this Court concludes that the SALPC has not contravened sections 46, 47 and 48 of the LPA as

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[8] 2001 (4) SA 1184 (SCA) at para 14.
[9] Id.
[10] Above n 4.

contended by calling upon this Court to exercise its disciplinary powers as opposed to entertaining the call of the Ombud. This Court is far from being convinced that this application should have been delayed for reasons of the Ombud process. Curiously, for reasons not spelled out anywhere, the engagement of the Ombud happened extremely late in the day. Mr. Ncongwane was already suspended and an opportunity for him to supplement his papers was already extended. It is beyond perspicuous that the late engagement was a stratagem. Considering the objects of the Ombud and its functions set out in sections 46 and 48, discipline of legal practitioners is off its bounds. Accordingly, this argument must fail.

Exchange of affidavits.

[24] This is a baseless decry. On 28 November 2024, this Court made a specific order regarding the exchange of affidavits. Mr. Ncongwane is, in effect, in contempt of that order. Having breached the clear Court order, it does not avail to him to now decry breach of section 9 and 34 of the Constitution. Without any further ado, this ask was unnecessary, considering that even on 4 June 2024, an opportunity was availed for Mr. Ncongwane to submit supplementary affidavits. For these brief reasons, a further ask for exchange of affidavits amounts to abuse of court process and falls to be dismissed. A similar approach was adopted and rejected by this Court in *South African Legal Practice Council v Selota* (*Selota*).[11] The approach adopted by Mr. Ncongwane is not dissimilar to the one adopted by Mr. Selota. An allegation that the SALPC acted oppressively and unfairly is without basis. The SCA in *Kgaphola*[12] found that unjustifiably impugning the integrity of a regulatory body without basis is a professional misconduct.

[25] There is no legal basis to contend that the provisions of section 9 and 34 of the Constitution have been breached.

Lack of jurisdiction

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[11] [2025] ZAGPPHC 475.
[12] Above n 4.

[26] The argument that this Court lost its jurisdictional power after Mr. Ncongwane was transferred to a chapter of the SALPC that falls within the jurisdiction of the Mpumalanga Division of the High Court is rejected. As at the time of such transfer, these proceedings were already commenced in this Court in 2017. There is no application contemplated in section 27 of the Superior Courts Act[13] seeking an order to transfer the present application to the Mpumalanga Division of the High Court. This Court retains jurisdiction and has been exercising it since 2017. In 1909, the full bench in *Ueckermann v Feinstein (Feinstein)*[14]concluded that a defendant who laid by for a period of nine months without attacking a jurisdiction of a Court has acquiesced to the jurisdiction of a Court falling outside his territory. The argument of lack of jurisdiction must fail.

Pending appeal

[27] It is doubted by this Court that the order of 4 June 2024 is appealable. Its life span was limited. On determination of the question whether Mr. Ncongwane must or must not be removed from the roll, the impugned order of 4 June 2024 falls away. There is nothing that prevents this Court from considering the question of removal even if the appeal against the interim order pends. Accordingly, the argument of lack of powers to determine the present application must also fail. The approach taken by the Court in *Selota*[15] is apt and applies with sufficient, if not more, vigour in the present application.

The ask for conditional delivery of the supplementary affidavit accompanied by the undisclosed audit report.

[28] On 28 November 2024, the earlier full bench made an order as to when further affidavits may be delivered. For reasons that have not been spelled out anywhere, Mr. Ncongwane resolved to ignore the Court order. Yet again, he was in contempt. This ask for delivery of supplementary affidavit accompanied by the

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[13] Act 10 of 2013.
[14] 1909 TS 913. This case was cited with approval in *Hay Management Consultants v P3 Management Consultants* (439/03) delivered 30 November 2004 marked “reportable”.
[15] Above n 11.

undisclosed auditor's report was also made from the bar. Yet again, Mr. Ncongwane eschewed the launching of a substantive application. This kind of an approach was derided by the Supreme Court of Appeal in *Kgaphola*.[16] Asks of this nature ought to be made through a substantive application and should not be relegated to "from the bar" applications. This becomes more compelling in a situation where there was a contempt of court order to deliver affidavits.

[29] What compounded this ask is that it was only revealed on the second day of argument. It emerged as a request for guidance from the bench. Mr. Ncongwane was represented by three counsel, amongst of whom was a senior counsel. If the auditor's report was critical to the defence of Mr. Ncongwane, same ought to have been availed shortly after 28 November 2024. It is inappropriate for a legal practitioner facing serious allegations to simply adopt a supine approach. At the time of this ask, it was almost six months after a Court had afforded Mr. Ncongwane an opportunity to supplement his answer to the misconduct allegations. As indicated above, what is required is to afford any party an *audi alteram partem*. The present application emerged as far back as 2017. Mr. Ncongwane effectively had almost eight years to provide an answer to the allegations related to Ms. Jumbe.

[30] Because of all the above reasons, the ask was not justified and could not be accommodated by this Court. A simple explanation was required. That was, what happened to the funds held in trust on behalf of Ms. Jumbe? Since the funds were deposited around December 2012, all the records relating to the funds must be in hand.

The merits of the application

[31] It is common cause that an amount of R 5 432 784 was paid into the trust account held by the firm. It is also common cause that on 24 May 2013, the Court directed that a Trust must be created to receive the net proceeds of the capital amount due to Ms. Jumbe. The Trust was to be established by 24 May 2014, failing which, the Court was to be approached to provide further directions on the usage of

[16] Above n 4.

the capital amount. The Court specifically ordered that whilst the process of establishing the Trust is underway, the net proceeds must be invested in terms of section 78(2A) of the repealed Attorneys Act. There is a dispute as to whether there was a valid contingency fees agreement. Even if this Court is to depart from the premise that there was a valid contingency fees agreement, the monetary value of the 25% was set out by Mr. Farris in his report.

[32] Considering that which Mr. Farris states to be the fees due to the firm, a substantial amount ought to have remained in the trust account of the firm. The bank statements of the trust account revealed certain withdrawals attached to the capital amount. Amongst those, on 2 February 2013, an amount of R 100 000 was paid towards a Forex account. On the available evidence, by 24 May 2014, there is no indication that a Trust was formed as ordered. Additionally, there is no evidence that Mr. Ncongwane returned to this Court for further directions on how to handle the capital amount.

[33] Most importantly, there is no evidence that the net proceeds due to Ms. Jumbe were invested as ordered. In due course, this Court shall briefly consider the provisions of the old and the new Act regarding investments on behalf of a trust creditor. On 13 March 2013, months before the order of Court directing the net proceeds to be invested, an amount of R 4 000 000 was withdrawn against the balance standing in favour of Ms. Jumbe. According to Mr. Ncongwane, the amount was invested in accordance with section 78(2A) of the old Act. I interpose to mention that the letter dated 28 March 2025, signed by one Ms. Nozipho Ntshangase looks suspicious. The statements of the account in question reflect that the account is held at 1 Parkin Street Nelspruit. The letter indicates that the FNB Commercial branch that issued it is situated at 9 Friedman Drive Sandton. The text of the letter looks extremely unprofessional. Perhaps an investigation into the authenticity of this letter is warranted. This letter was purposed to convey confirmation of the account to be a section 78(2A) account. An affidavit would have carried far much weight perhaps. However, there is no evidence that the interest earned was paid over to Ms. Jumbe. The SALPC contends, which contention is accepted by this Court, that the money market account was a transactional account in favour of the firm and not an investment account in favour of Ms. Jumbe.

[34] The contention is supported by incontestable evidence of the bank statements of the Money Market Investment with account number 6[...], reflecting that the account holder is Macbeth Inc of 25 Samora Machel Drive Nelspruit. Over a period of about three years, 2013-2016, various transactions occurred in that account. Amongst the various dubious transactions, laid an amount of R 1 000 000, which was withdrawn on 17 September 2013 and identified as contingency fees. On 19 September 2013, an amount of R 350 000 was withdrawn to be invested. There is no indication as to where it was invested. As of 30 September 2016, the remaining balance in that account was R 1 606 321.99. As of 30 June 2024, the closing balance on that account was R 427 219.91.

[35] On 6 June 2018, an amount of R 11 000 was paid towards High Landrover. It is undisputed that out of the funds held in favour of Ms. Jumbe, a Ranger Rover motor vehicle, registered in the name of Mr. Ncongwane, was purchased. That the Range Rover was purchased on behalf of Ms. Jumbe, who had no driver's licence, was long rejected by Molahlehi AJ. On 1 February 2021, an amount of R 154 085.17 was withdrawn in favour of Willowcrest for rental of a property owned by Mr. Ncongwane. On 7 May 2024, two separate amounts were withdrawn in respect of rental and arrears thereof. Those were, R 18 260.95 and R 27 174.30 respectively. Of significance, these withdrawals occurred three days after an order suspending Mr. Ncongwane. In terms of the 4 June 2024 Court order, a *curator bonis* was appointed to administer and control the trust accounts of the firm.

[36] As of the hearing of this application, the firm had not accounted to Ms. Jumbe regarding the net proceeds of the capital funds nor the interest earned in her favour out of the investment account. Regard being had to the balance as of 30 June 2024, the only reasonable inference to be drawn is that the funds of Ms. Jumbe have been misappropriated. Regard being had to the abovestated conduct, this Court is satisfied that the SALPC has proven the contraventions outlined in the Farris report on the balance of probabilities. Accordingly, the first leg of the enquiry has been established. Before turning to the remaining legs, which call for a value judgment to be made, it is appropriate to turn to the question whether the R 4 000 000 was deposited in a section 78(2A) account or not.

Was there a section 78(2A) investment account or not?

[37] Section 78(2A) provides as follows:

> "Any **separate trust savings** or other interest-bearing account –
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> a. Which is opened by a practitioner for the purpose of investing therein, **on the instructions of any person**, any money deposited in his trust banking account; and
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> b. Over which the practitioner exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity, **shall contain a reference to this subsection.**"

[38] Section 86(4) of the LPA has replaced section 78(2A), and it reads thus:

> "A trust account practice may, **on the instructions of any person**, open a trust savings account or other interest-bearing account for the purposes of investing therein any money deposited in the trust account of that practice, on behalf of such person over which the practice exercises exclusive control as a trustee, agent or stakeholder or in any other fiduciary capacity."

[39] Section 86(5) of the LPA provides that:

> "Interest accrued on money deposited in terms of this section must, in the case of money deposited in terms of –
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> a. …
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> b. Subsection (4), **be paid over to the person referred to in that subsection**: Provided that 5% of the interest accrued on money in terms of this paragraph **must be paid over to the Fund** and vests in the Fund."

[40] Considering the evidence presented before this Court, the account opened by the firm does not meet the requirements of the section. There is no evidence that the Money Market account was opened on the instructions of Ms. Jumbe. At the time it was opened and funds deposited therein; the Court order of 24 May 2013 was not in

place. Considering the transactions that occurred in that account, it is beyond perspicuous that the trust funds of Ms. Jumbe were misappropriated. The money is effectively lost into a black hole, never to return to Ms. Jumbe. I now turn to the remaining requirements.

Is Mr. Ncongwane fit and proper to remain on the roll of legal practitioners?

[41] This is a requirement that calls for an exercise of value judgment, regard being had to the alleged contraventions. At this point, the cumulative effect of all the allegations is considered. Overwhelmingly, the evidence demonstrates that Mr. Ncongwane has a penchant for disregarding the authority of the Court as a constitutional institution. He disobeyed several Court orders, and he appears to be nonchalant about it. In his Court papers, there is no iota of apology or a reflection of remorse. Clearly, Mr. Ncongwane is not a fit and proper person to remain on the roll of legal practitioners. In *Kgaphola,*[17] the SCA remarked thus:

> "[33] The sum total of the above is that complaints against the respondent have been established on a balance of probabilities. This leads me to the second enquiry. A value judgment has to be made whether the respondent is a fit and proper person to remain on the roll of attorneys. While some of the offences relate to inattentiveness and lack of application, two are regarded as serious, i.e. practising without a fidelity fund certificate and failure to respond to correspondence."

[42] In *Selota*,[18] dealing with the question of fit and properness, the Court remarked thus:

> "[113] An attorney's duty in regard to the preservation of trust money is fundamental, positive and unqualified duty. Neither negligence nor wilfulness is an element of a breach of such duty. Where trust money is paid to an attorney it is his/her duty to keep it in his/her possession and to use it for no

[17] Above n 4.
[18] Above n 11.

other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have 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/her client the instant it becomes payable. Trust money is generally payable before and not after demand."

[43] In his affidavit, deposed to in July 2017, Mr. Ncongwane availed an annexure demonstrating how the funds of Ms. Jumbe were used. From the very annexure, it is perspicuous that the funds were misappropriated or misused. The use was not in line with the 24 May 2013 order. Accordingly, a value judgment is formed that Mr. Ncongwane is not a fit and proper person to remain on the roll of legal practitioners.

What is the appropriate sanction?

[44] As confirmed in *Kgaphola*,[19] the seriousness of the conduct guides a Court at this stage. A perplexing suggestion was made by counsel for Mr. Ncongwane that there are individuals within the SALPC that are effectively baying for the blood of Mr. Ncongwane. They singled him out of Mpumalanga practitioners to "deal" with him. There is absolutely no merit in this suggestion. The duty to impose a sanction on a practitioner remains that of a Court. The fact that Mr. Farris suggested a debatement of accounts is of no moment. Mr. Farris and Reddy were provided with insufficient information. Mr. Ncongwane had a duty to disclose all the necessary information to enable this Court to perform its duties. When the conduct of Mr. Ncongwane is considered cumulatively, the only appropriate sanction is that of removal from the roll. Mr. Farris reached a conclusion that Mr. Ncongwane continues to be a risk to the Fund.

[45] This Court takes a view that Mr. Ncongwane is a danger to the consumers of legal services, when his conduct is appropriately evaluated. In *Selota*,[20] the Court echoed these sentiments with such sagacity. It said:

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[19] Above n 4.
[20] Above n 11.

"[132] However, when one takes the totality of transgressions into account, this court would be failing in its duty were we not to find that the cumulative effect of the offending conduct demands that the respondent be struck of the roll of practitioners."

[46] Similar sentiments must be expressed in this matter. Considering that there is little balance left in the supposed section 78(2A) account, it must be inferred that the money was stolen. The theft of money held in trust is a weighty consideration militating against any lesser sanction than removal.[21]

[47] For all the above reasons, I make the following order:

1. **The draft order marked "X" and annexed to this judgment is made an order of this Court.**

_____

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

_____

R FRANCIS-SUBBIAH
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

(I agree and it is so ordered)

APPEARANCES:

[21] See *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 539B-C.

As per the draft order.

Date of the hearing:	22-23 May 2025
Date of judgment:	9 June 2025