



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

case no: **2012/2024**

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

KABELO MATEE

Respondent

CORAM: JP DAFFUE J

HEARD ON: 12 APRIL 2024

REASONS DELIVERED ON: 22 APRIL 2024

[1] The respondent is Kabelo Matee, an attorney who was admitted to practise as such on 22 October 2009. He has been practising ever since in Bloemfontein as a sole practitioner.

[2] On 12 April 2024 the South African Legal Practice Council (the LPC) approached me whilst on urgent court duties for the respondent's suspension from practice pending the outcome of a disciplinary hearing to be conducted by its Disciplinary Committee (the DC) and/or criminal investigations under Cas number 14/01/2024, alternatively for such period and on such conditions as the court may deem appropriate, together with the customary orders relating to suspension.

[3] The LPC's application is brought in accordance with the provisions of s 43 of the Legal Practice Act 28 of 2014 (the LPA) which reads as follows:

'43 Urgent legal proceedings

Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must

inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.'

[4] I shall deal with the legal argument presented to me later herein, but wish to point out at this stage already that none of the parties referred me to any reported or unreported judgments specifically dealing with s 43 of the LPC. I researched the issue on my own and could also not find any reported judgment. The predecessor of the LPA, the Attorneys Act 53 of 1979, did not contain a similar provision. However, the established principles pertaining to disciplinary proceedings against errant attorneys are clear and will be dealt with soon.

[5] The application to this court was preceded by the following:

- a) Ms RY Ramohauoa, the daughter of the late Boseya Bernice Tshikare, was duly appointed as executrix of her mother's estate;
- b) she instructed the respondent to act as her attorney and to assist her with the administration and finalisation of the deceased estate;
- c) an account was opened in the name of the estate late Boseya B Tshikare with First National Bank (FNB);
- d) Ms Ramohauoa mandated the respondent to open the account and to operate thereon;
- e) the respondent failed to finalise the estate and Ms Ramohauoa became suspicious, causing her to approach a new legal representative, whereupon they established that the respondent had transferred monies from the aforesaid estate account to his personal and business accounts;
- f) Ms Ramohauoa filed a written complaint dated 10 January 2024 with the LPC;
- g) the LPC's Investigating Committee (IC) investigated the complaint and recorded its findings on 20 March 2024, it having been satisfied that, based on prima facie evidence available, the respondent was guilty of misconduct, warranting proceedings in terms of s 43 of the LPA for his suspension and the withdrawal of his Fidelity Fund Certificates for the years 2022, 2023 and 2024;
- h) on 25 March 2024 the Management Committee of the LPC resolved to adopt the recommendation of the IC where after it instructed Jacobs Boucher Attorneys on 27 March 2024 to launch a s 43 application;

i) application papers were drawn and issued on 10 April 2024 where after the application was served on respondent the same day by email, although service of the application by the sheriff was effected only at 13h15 on 11 April 2024.

[6] When the matter was called on Friday morning, 12 April 2024 at 09h30, Adv P Modise on behalf of the respondent applied for a postponement from the bar due to the fact that the respondent received notice of the application the previous day. No formal application for postponement was filed. I adjourned the matter to 14h15 that day and ordered the respondent to file his application for postponement on/or before 12h00, the LPC to reply thereto by 13h00 and the respondent to file his replying affidavit to the postponement application on/or before 14h00.

[7] An application for postponement was filed to which the LPC replied in a detailed answering affidavit. The respondent did not file a replying affidavit. The respondent requested a postponement to Thursday 18 April 2024 and for directions to be given pertaining to truncated time frames. If I granted such relief, it would mean that one of my colleagues would be saddled with an opposed application, having to read papers such as the replying affidavit and heads of argument to be filed the previous day only. Furthermore, the suggested time line did not provide for the intended application to review and set aside the LPC's decision to withdraw the Fidelity Fund Certificates. The respondent made the point that he intended to launch such an application and that the two applications should be consolidated and heard together.

[8] Having considered the application for postponement, I dismissed it and informed the parties that reasons would follow in due course. Applications for postponement are not there for the taking. The respondent failed to place any evidence on record to show that he has an arguable defence and should be given sufficient time to file a proper answering affidavit. Instead he resorted to attack the LPC for the manner in which they elected to litigate. It was just not good enough to aver that he and his counsel could not proceed with the drafting of an answering affidavit to the main application as they were relying on his administrative staff who were handling the documents needed to attach to the affidavit. According to him, these documents were not readily available at the time, *ie* on 11 April 2024. This was said whilst the respondent had been given a sufficient opportunity to respond to the complainant's version before the IC as I shall show herein later.

[9] Adv Modise indicated that he had no instructions to argue the main application and that he left the decision in the court's hands. I indicated to the parties that I did not intend to grant an order as set out in the notice of motion, but that I intended to grant a rule nisi with return date 16 May 2024 with interim relief and directions pertaining to filing of affidavits and heads of argument. Mr Modise indicated that although he was not prepared to argue the application at that stage, the court should consider granting an interim order with truncated time periods and an earlier return date. Mr Boucher on behalf of the LPC provided the court with a draft order with 17 May 2024 as return date. As the 17th is on a Friday, I emphasised that opposed motions are dealt with on Thursdays and not on Fridays.

[10] After considering the main application and bearing in mind the seriousness of the allegations contained in this application to which I shall refer in the next paragraphs, I granted a rule nisi with return date 2 May 2024. Further directions were issued in respect of the filing of affidavits and heads of argument as set out in the order issued that day. I also ordered that paragraphs 3.1 to 3.12 of the order shall operate as interim orders with immediate effect. Again, I mentioned that my reasons would follow in due course.

[11] It cannot be over-emphasised that the respondent was practising without a Fidelity Fund Certificate at the time when I heard the application. This was common cause. It is also common cause that the respondent was at all times obliged to be in possession of a Fidelity Fund Certificate in terms of s 84 of the LPA and had to keep a proper trust account practice as provided for in s 87(1), read with s 87(3) of the LPA. The relevant sub-sections of s 84 read as follows:

'84 Obligations of legal practitioner relating to handling of trust monies

(1) Every attorney or any advocate referred to in section 34 (2) (b), other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or state advocate and who practises or is deemed to practise-

(a) for his or her own account either alone or in partnership; or

(b) as a director of a practice which is a juristic entity,

must be in possession of a Fidelity Fund certificate.

(2) No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.

(4) A Fidelity Fund certificate must indicate that the legal practitioner concerned is obliged to practise subject to the provisions of this Act, and the fact that such a legal practitioner holds such a certificate must be endorsed against his or her enrolment by the Council.

(5) A legal practitioner referred to in subsection (1) who-

(a) transfers from one practice to another; or

(b) ceases to practise,

must give notice of this fact to the Council and comply with the Council's relevant requirements in relation to the closure of that legal practitioner's trust account and in the case of paragraph (b) return his or her certificate to the Council.'

[12] The respondent threatened to bring an application against the LPC to review and set aside its decision to withdraw his Fidelity Fund Certificates. His letters of 9 and 10 April 2024 were attached to the LPC's answering affidavit in the postponement application. He will get his opportunity in this regard. I provided in my order that he should file his application in the form of a counter-application on/or before 18 April 2024. However, and until he is successful in this application, he should not be allowed to practise as this may have an extremely detrimental effect on his current and prospective clients. If further trust funds are misappropriated, those clients will have no claim against the Fidelity Fund.

[13] The court may prohibit legal practitioners to operate on their trust accounts as provided in s 89 which reads as follows:

'The High Court may, on application made by the Council or the Board, and on good cause shown, prohibit any legal practitioner referred to in section 84 (1) from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer that trust account, with any rights, powers and functions in relation thereto as the court may deem fit.'

[14] An attorney such as the respondent, he being a sole practitioner practising for his own account, who practises without a Fidelity Fund Certificate, is guilty of a criminal offence as set out in s 93(8) of the LPA which reads as follows:

'(8) Any person who contravenes section 84 (1) or (2) or section 34, in rendering legal services-

(a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment;

(b) is on conviction liable to be struck off the Roll; and

(c) is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.'

This court cannot put its stamp of approval on such unlawful conduct by allowing the respondent to continue with his practice in such circumstances.

[15] Having pointed out the problem faced by the respondent mentioned in the previous paragraphs, that might have been the end of the matter. However, for sake of completeness, I shall deal with the issues at hand in more detail, accepting that my colleague who will eventually adjudicate the application will not be bound by my reasons insofar as mere prima facie proof of misconduct is required at this stage.

[16] The respondent's accusation in the application for postponement that the LPC is vexatious, accusing it of an approach that 'has all the hallmarks of a regulator which abuses its powers and the court process rather than a fruitful discharge of its mandate,' must be criticised. His attitude reminds me of the following dictum in *Law Society of the Northern Provinces v Mogamí*¹:

'[26] Very serious, however, is the respondents' dishonest conduct of the proceedings. Instead of dealing with the issues they launched an unbridled attack on the appellant. It has become a common occurrence for persons accused of a wrongdoing, instead of confronting the allegation, to accuse the accuser and seek to break down the institution involved. This judgment must serve as a warning to legal practitioners that courts cannot countenance this strategy. In itself it is unprofessional. The problem is that the respondents' professional body appears to have instigated their behaviour and aided and abetted them in making untruthful denials, ignoring laws and court judgments, and launching an attack on the appellant. Had it not been for the invidious role of their society I would have had little hesitation to find that the respondents were not fit to continue practising.'

[17] Clearly, attorneys confronted with applications for striking-off or suspension should be cautious of not trying to blame the LPC without any foundation. Harms ADP also remarked as follows in *Malan and Another v Law Society of the Northern Provinces*²:

'Furthermore, instead of dealing with the merits of the allegations, the appellants conducted a paper war and he attacked the Society and its officers, they attacked the Fidelity Fund and they attacked the attorneys who had to take over their files – in short, their approach on the papers was obstructionist.'

[18] Although I could not find any reported judgments on s 43 of the LPA, the principles applicable to striking-off and suspension under the LPA are similar to that which applied under the Attorneys Act 53 of 1979 as well as its predecessor. These proceedings are *sui generis* and are brought by the LPC *custos morum* as the guardian of morals of the legal practitioners' profession. It performs a public duty as set out in

¹ 2010 (1) SA 186 (SCA) para 26.

² 2009 (1) SA 216 (SCA) para 27.

*Solomon v The Law Society of Good Hope*³ and in *Hepple and Others v Law Society of the Northern Provinces*⁴.

[19] Although this is not a case as in *Hepple supra*, the following principle stipulating the duty resting on an attorney in these kinds of proceedings should be reiterated⁵:

'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 their failure to do so may count against them.'

[20] I accepted that the respondent had a day, or even less, to file an answering affidavit to the main application for his suspension. But he had ample time to respond fully to the complainant's complaint. His first so-called affidavit commissioned by himself was filed with the IC on 13 February 2024 in response to the complainant's complaint. At that stage he mentioned that due to the seriousness of the allegations, he had to instruct his bookkeeper to investigate the transfers of money which were all made in his favour. In this response, filed nearly two months prior to the hearing of the application for his suspension, the respondent alleged the following pertaining to the allegations against him which I quote *verbatim*:

2.3.1 ... that all transfers were made in my favour.

2.3.3 ... my bookkeeper brought it to my attention that I was wrongfully transferring funds from the estate late account, instead of my business account.

2.3.4 The reason for the stupid mistake is [his exact words] all the accountsonly reflects account numbers, not the names of the account.

2.3.5 on the 10th of February 2024, I transferred an amount of R 550 000.00 from the said business account [the business conducted by him] in my trust account, in favour of the client.

2.3.6 ... it looks like I was utilising the estate late account as my own piggy bank.

2.3.7 I accept the error on my part and I am willing to take any sanction that the law Society is willing to impose on me.

....

5. In the premises I submit that there was no misconduct on my part and these complaints are lodged with the LPC to frustrate the proper administration of justice and are vexatious in nature.'

³ 1934 AD 401 at 408 – 409.

⁴ [2014] 3 All SA 408 SCA.

⁵ *Ibid* para 9.

[21] The complainant was given an opportunity to respond to the respondent's version which she did in writing the same day. It is not necessary to refer thereto, but she raised valid points. The respondent replied in writing on 5 March 2024, but he again side-stepped the real issue, *ie* his apparent misappropriation of trust funds in an amount in excess of R600 000,00. Again, he said that he would 'accept any sanction that the LPC would seek to impose due to [his alleged] oversight.' He elected not to play open cards with the LPC, or its IC. He had ample opportunity since receipt of the complaint to get his ducks in a row, but he failed to do so.

[22] It is the LPC's case that a total of 69 payments were made in an amount equal to R 615 300.00 from the estate late Boseya B Tshikare to the respondent over a period of 13 months from 25 August 2022 to 4 September 2023. Some transfers were for amounts as little as R100.00, whilst there were also payments of R 90 000.00, R 50 000.00, R 30 000.00, R 20 000.00 and R 10 000.00 to mention just some of the payments.

[23] On 14 December 2023 when the complainant and her new attorney investigated the matter, they found that there was a mere R877.00 in the bank account of her deceased mother's estate. After the bomb had exploded, the respondent paid an amount of R 534 228.68 to the credit of the deceased estate's bank account on 15 February 2024. Hereafter he was still indebted to the deceased estate in an amount of R 81 071.32. It is apparent from the documents before the court that his trust account balance is totally insufficient to even settle this outstanding amount. It is also pointed out that in order for the respondent to have sufficient funds to transfer the aforesaid amount to the deceased estate's bank account, he had received an amount of R 550 000.00 on 10 February 2024. The respondent stated that this amount was transferred from the bank account of a business conducted by him. The LPC is obviously very concerned about where these funds came from and they made it clear that this should be investigated.

[24] Although there is proof of financial discrepancies as set out in detail in the LPC's affidavit and annexures thereto, the respondent did not deny the transactions, but relied upon a 'simple mistake'.

[25] I am satisfied that the LPC has established the offending conduct relied upon, if not on a balance of probabilities, at least prima facie. Based on this finding, the respondent is not a fit and proper person to continue to practise as an attorney at this stage pending finalisation of this application and/or the outcome of the disciplinary hearing to be conducted by the LPC's Disciplinary Committee.

[26] I truncated time periods as requested by the respondent's counsel to ensure that the sanction of suspension does not hang over his head for too long before he is provided with an opportunity to present the court with a detailed version of his defence.



JP DAFFUE J

On behalf of the Applicant:
Instructed by:

Mr Boucher
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On behalf of Respondent:

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