

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 20371/2017

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

.....  
DATE

.....  
SIGNATURE

26/1/18

In the matter between:

**THE LAW SOCIETY OF THE NORTHERN PROVINCES**

Applicant

and

**SIFELANE MALANGE**

Respondent

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**REASONS FOR GRANTING THE ORDER**

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**TEFFO J:**

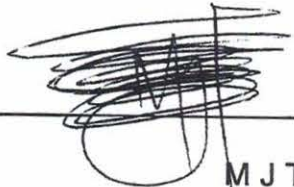
[1] The above matter came before me on 11 April 2017 by way of urgency. I noted that the respondent was not before court. It is the view of the court that before an attorney admitted by this court could be struck off the roll, the

application should be preceded by timeous notification and a proper inquiry held by the Law Society to establish the veracity of the allegations.

[2] Ordinarily applications to strike off or remove an attorney's name from the roll of attorneys come before two Judges in the Appeal Court and require time for careful consideration.

[3] In the light of these factors, I took the view that it would be in the interest of justice that the respondent be suspended from practising to prevent any further misappropriation of funds but to allow the Law Society to complete its investigations and properly investigate those aspects in which they could not get the cooperation of the respondent. A complete investigation will enable the Law society to place full facts before court in an application for the removal of the respondent's name from the roll of attorneys.

[4] I therefore grant the order of suspension in terms of the attached draft order marked 'x'.



M J TEFFO  
JUDGE OF THE HIGH COURT

## APPEARANCES

FOR THE APPLICANT

T A Mothle

INSTRUCTED BY

Mothle Jooma Sabdia Inc

FOR THE RESPONDENT

No appearance

(X) [scribble]

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

**PRETORIA THIS 11<sup>TH</sup> DAY OF APRIL 2017**

**BEFORE THE HONOURABLE JUSTICE**

*Terr*

**CASE NO: 20371/2017**

In the matter between:

**THE LAW SOCIETY OF THE NORTHERN PROVINCES**

Applicant

and

**SIFELANI MALANGE**

Respondent

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**DRAFT ORDER**

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After having heard counsel and having read the papers filed on record:-

**IT IS ORDERED THAT:-**

1. The Applicant's non-compliance with the forms and service provided for in the Uniform Rules is condoned and this application is treated as one of urgency in terms of Rule 6(12)(a).

2. The Respondent, **SIFELANI MALANGE**, is hereby suspended from practising as an attorney on an urgent basis pending the finalisation of the application for the removal of his name from the roll of attorneys.
3. The Respondent surrender and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court.
4. In the event of the Respondent failing to comply with the terms of this order detailed in paragraph 3 (three) *supra* within two (2) 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.
5. The Respondent is prohibited from handling or operating on his trust accounts as detailed in paragraph 6 (six) *infra*.
6. **JOHAN VAN STADEN**, the head: members' affairs of Applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of Respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with Respondent's



practice as an attorney and including, also, the separate banking accounts opened and kept by Respondent at a bank in the Republic of South Africa in terms of Section 78(1) of Act No 53 of 1979 and/or and any separate savings or interest bearing accounts as contemplated by section 78(2) and/or section 78 (2A) of Act No, 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said subsections 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 an duties:

- 6.1. immediately to take possession of the Respondent's accounting records, records, files and documents as referred to in paragraph 7 *infra* 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 purposes as may be necessary to bring to completion current transactions in which Respondent was acting at the date of this order.
- 6.2. subject to the approval and control of the board of control of the fund 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 Respondent in respect of monies held, received and/or invested by Respondent in terms of section 78(1) and/or section 78(2) and/or section 78(2A) and/or section 78(2A) of Act No 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 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).

- 6.3. to ascertain from Respondent's accounting records the names of all persons on whose account Respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon 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.
- 6.4. To call upon 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 Respondent, and if so, the amount of such claim.

- 6.5. To admit, 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 creditor's right of access to the civil courts.
- 6.6. 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.
- 6.7. In the event of there being any surplus in the trust account(s) of 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(2) of Act No 53 of 1979 in respect of any interest therein referred to and, secondly without prejudice to the rights of the creditors of Respondent, the costs, fees and expenses referred to in paragraph 13 of this order, or such portion thereof as has not already been separately paid by Respondent to the 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 Respondent, if he is solvent, or, if<sup>6</sup>  
Respondent is insolvent, to the trustee (s) of Respondent's insolvent  
estate.

6.8. In the event of there being insufficient trust monies in the trust  
banking account(s) of 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.

6.9. 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

6.10. To render from time to time, returns to the board of control of the  
fund showing how the trust account(s) of Respondent has/have been  
dealt with, until such time as the board notifies him that he may  
regard his duties as curator as terminated.

7. The Respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:
  - 7.1. Any monies received, held or paid by Respondent for on account of any person while practising as an attorney;
  - 7.2. Any monies invested by Respondent in terms of section 78(2) and/or section 78(2A) of Act No 53 of 1979.
  - 7.3. Any interest on any monies so invested which was paid over or credited to Respondent.
  - 7.4. Any estate of a deceased person or an insolvent estate or an estate under curatorship administered by Respondent, whether as executor or trust or curator or on behalf of the executor, trustee or curator.
  - 7.5. Any insolvent estate administered by Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act No 24 of 1936.
  - 7.6. Any trust administered by Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988.

- 7.7. Any company liquidated in terms of the Companies Act, No 61 of 1973, administered by Respondent as or on behalf of the liquidator.
- 7.8. Any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by Respondent as or on behalf of the liquidator; and
- 7.9. The Respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 6 (six) *supra*, provided that, as far as such accounting records, records, files and documents are concerned, Respondent shall be entitled to have reasonable access to them but they always subject to the supervision of such curator of his nominee.
8. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order on service upon him, or after return by the person entrusted with the service thereof that he has been unable to effect service on 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.

9. 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 paragraph 9.1 *supra* 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 property entrusted to Respondent provided that any person entitled thereto shall be granted reasonable access and shall be permitted to make copies thereof.
- 9.3. Publish this order or an abridged version thereof in any newspaper he considers appropriate; and
- 9.4. Wind-up of the Respondents practice.

10. The Respondent be and is hereby removed from office as:-

- 10.1. Executor of any estate of which Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1).
- 10.2. 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, No 66 of 1965.
- 10.3. Trustees of any insolvent estate in terms of section 59 of the insolvency Act, No 24 of 1936.
- 10.4. Liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973.
- 10.5. Trustee of any trust in terms of section 20(1) of Trust Property Control Act, No 57 of 1988;
- 10.6. Liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, no 69 of 1984; and



10.7. Administrator appointed in terms of Section 74 of the Magistrate's Court Act, No 32 of 1944.

11. 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.
12. A certificate issued by a director of the Attorney's 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.
13. The Respondent be and is hereby directed:

- 13.1. To pay, in terms of section 78(5) of Act No 53 of 1979, the reasonable costs of the inspection of the accounting records of the Respondent;
- 13.2. To pay the reasonable fees of the auditor engaged by the Applicant.
- 13.3. To pay the reasonable fees and expenses of the curator, including travelling time which are computed at a rate agreed to between the Law Society and the Attorneys Fidelity Fund and *prima facie* proof whereof shall be sufficiently constituted by way of a certificate purporting to be signed by the Curator and specifying expenses and the length of time during which the Curator was engaged in the performance of the duties of Curator.
- 13.4. The costs of the Sheriff employed in terms of paragraphs 4 and 8 *supra*.
- 13.5. To pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator aforesaid.
- 13.6. To pay the expenses relating to the publication of this order or an abbreviated version thereof; and

13.7. the costs of and incidental to this application on an attorney and client scale.

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**BY ORDER OF THE COURT**

**REGISTRAR**

Appearance for the Applicant: Mr T Mothle.

Appearance for the Respondent: