HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 30695/2017

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED. ✓
DATE 14/3/2018
SIGNATURE

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES Applicant

and

MPHO MOFOMME Respondent

JUDGMENT

DAVIS, J

[1] This is an application for the striking of an attorney from the roll of attorneys of this court. The Respondent is the attorney in question. He is a senior practitioner, being 59 years old and having been in practice since 30

March 1986. The Applicant is the law society under whose auspices the Respondent practiced.

[2] The requirements for and the approach of a court to an application for striking-off are trite. They are these:

2.1 The proceedings do not constitute ordinary civil proceedings. They are *sui generis* in nature (see: Cirota v Law Society Transvaal 1979 (1) SA 172 (A) at 187 H, Prokureursorde van Transvaal v Kleynhans 1995 (1) SA 839 T at 851 G-H and Hepple v Law Society of the Northern Provinces [2004] 3 All SA 408 (SCA) at [9])

2.2 The determination of whether the relief sought by the Law Society should be granted or not, involves a three-stage enquiry:

(a) First it must be determined whether the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry;

(b) Secondly, the court must consider whether the attorney is a fit and proper person to continue to practice or not. This part of the enquiry involves a weighing up of the conduct complained against the conduct expected of an attorney. This involves a value judgment;

(c) Lastly, the court must enquire whether in all the circumstances of the matter, the attorney is to be removed from the roll of attorneys ("struck-off") or whether an order

of suspension from practice will suffice. This is a discretionary issue.

See: Jasat v Natal Law Society 2000 (3) SA 44 SCA; Summerly v Law Society, Northern Provinces 2006 (5) SA 613(SCA) and Malan v Law Society, Northern Provinces 2009 (1) SA 216 (SCA)).

[3] The facts placed before the court by the Law Society:

3.1 The Respondent was convicted of fraud by the Magistrates' Court for the Regional Division of North West held at Ga-Rankuwa (the Ga-Rankuwa Court) on 5 March 2015;

3.2 On 7 August 2015 the Ga-Rankuwa court sentenced the Respondent to eight years imprisonment;

3.3 The Respondent's application for leave to appeal against his sentence was successful and his application for leave to appeal his conviction was refused;

3.4 Before the appeal relating to the sentence could be heard, the Respondent launched a petition for leave to appeal against his conviction in terms of Section 309 C (2) (iii) of the Criminal Procedure Act, No 51 of 1977 on 24 August 2015;

3.5 The North West High Court refused the Respondent's petition on 18 August 2016 and postponed the appeal in respect of his sentence to 31 March 2017;

3.6 Hereafter the Respondent applied to the Supreme Court of Appeal for the requisite leave to appeal against his conviction, which application was refused on 4 November 2016;

3.7 Again prior to the hearing of the appeal against his sentence, the Respondent applied for leave to appeal against his conviction to the Constitutional Court, which court dismissed his application on 30 January 2017;

3.8 On appeal against his sentence, the Respondent's sentence was reduced from eight years to five years imprisonment of which two years were suspended;

3.9 Prior to the commencement thereof, the Respondent however launched two further applications, the first of which is a review application in the North West High Court against the conviction of him by the Ga-Rankuwa Court. This application was launched on 7 June 2017 and is opposed. Although the application and its founding papers are before this court, nothing further is known about the status of the application;

3.10 The second further application was one launched on 28 June 2017 in terms of Section 17(2)(f) of the Superior Courts Act for a reconsideration of the refusal of the application for leave to appeal. This application was dismissed on 15 August 2017 for the reason that no exceptional circumstances warranting reconsideration or variation of the decision refusing the application for leave to appeal had been established.

[4] The Respondent's initial response

Apart from admitting the procedural history and relying heavily on the pending review application and the then still pending application in terms of Section 17(2)(f) of the Superior Court Act, the Respondent in his initial answering affidavit deposed to on 30 June 2017, failed to deal with any of the allegations of misconduct levelled against him and simply asked for the striking off application to be postponed indefinitely pending finalization of the two aforementioned applications.

[5] The nature of the complaint

The details of the complaint contained in the Law Society's founding affidavit can further be gleaned from an affidavit of the complainant lodged in a rescission application of a divorce order obtained by the Respondent. It is, in short, the following:

5.1 The Respondent and the complainant got married to each other on 27 April 1992 in community of property;

5.2 Some eighteen year later the parties separated and the Respondent left the matrimonial home during November 2010. The complainant remained in the matrimonial home where she was still residing at the time of her rescission application as she has then already been doing for more than ten years;

5.3 Some ten months later, whilst attending a funeral, the complainant found out from a friend that she had apparently been divorced. Enquiries led her to establish that the divorce order had been granted already on 14 March 2011. The order was granted in the

Ga-Rankuwa Court and provided for a divorce order and that each of the parties to the divorce retain the assets alleged then to be in their possession;

5.4 How the divorce order came to be obtained by the Respondent formed the subject matter of the fraud charges against him;

5.5 The Respondent was the one who had instituted the divorce proceedings against the complainant. In it, he alleged that she was residing, not at the matrimonial home, but at a different address, being a property owned by the Respondent and the complainant but which has been rented out for the past 15 years and which was at the time occupied by foreigners;

5.6 Service of the summons however, did not take place at the designated address, but at the sheriff's offices. Apparently the Respondent's co-accused in the criminal matter had been sent to the sheriff to have service of the divorce summons served on her. Upon the sheriffs insistence on proof of identity, the co-accused returned some days later with proof which convinced the sheriff that she was the complainant. Based on this, the sheriff effected "personal service";

5.7 The Respondent did not use the name or the address of his firm's "Law Chambers" (or that of a correspondent) in his summons and used a private residential address and based on a return of the sheriff obtained as aforesaid, obtained a divorce order on an unopposed basis;

5.8 I interpose to state that the Sheriff also deposed to an affidavit in the complainant's rescission application. Apart from confirming the facts as stated by the complainant she added that the attendance of the Respondent's co-accused at the sheriff's office was obtained by the telephoning of a cell-phone number given to her by the Respondent, to which the co-accused responded. Upon the co-accused's second appearance at the sheriff's office, a green bar-coded identity document was produced, identifying the bearer as the complainant. It was then that the service was effected;

5.9 The complainant further confirmed that the cell-phone number given to the sheriff by the Respondent was not hers, that she still had possession of the own identity document and that she was never contacted by the sheriff;

5.10 The Respondent initially opposed the rescission application but this was apparently settled at some stage resulting in an order for the division of the joint estate.

[6] The hearing of the application

At the hearing of the application counsel appeared for the Respondent. He was, however only telephonically briefed two days prior to the hearing and only received the documents for his brief the day before the hearing. He was made aware of the fact that, despite timeous service of the notice of set-down and other correspondence, no heads of argument had been delivered on behalf of the Respondent. He was himself also not briefed to argue the merits of the matter, but to request a postponement thereof from the bar without a substantive application. He stated that he was unable to consult on or draft such application as the Respondent is currently incarcerated (no one could tell the court since

when). After some debate, it appeared that his request was not for a postponement of the matter but in fact a request for a stay thereof until the review application referred to above has been finalized. I shall deal with the issue of a stay further herein later.

[7] The supplementary answering affidavit:

During the debate on the request for a stay of the matter the Law Society handed up a supplementary affidavit served on behalf of the Respondent on the Law Society on 1 February 2018 (that is one month prior to the hearing). The affidavit was deposed to on 29 January 2018. In this affidavit, the Respondent *inter alia* states the following in dealing with the merits of the main application:

7.1 That he had expected the Law Society to wait until he had exhausted all his remedies in respect of his criminal matter before embarking on the striking-off application, but to no avail;

7.2 That the "facts in the criminal case" will become irrelevant once his review application is successful and that he reserves his rights to file yet another answering affidavit on the merits should his review application be unsuccessful.

7.3 He states that *"... the outcome of the review application will direct the content of such affidavit and the strategy I would rely on drawing such affidavit"* and *"If the Honourable Court strikes my name from the roll of practicing attorneys, I will have to close my practice offices, submit my admission court order (sic) to the applicant and have to spend money for the readmission process. The latter express in addition to loss of clients and income, is obviously prejudicial to my career. The loss of status, reputation*

and goodwill of my practice would be devastating, especially if the Honourable Court sets aside the Criminal trial due to the irregularities".

7.4 He take issue with that he does not wish to argue the merits of his review application (which he maintains are good) "... *and submit myself to the Honourable Court to decide on it*".

7.5 He takes issue with the reply filed by the Law Society in answer to his initial answering affidavit where he had requested a similar stay pending the finalization of the Section 17(2)(f) application which was then pending and which has since been dismissed, as well as the review application, a copy of which had already then annexed.

7.6 He terms his request *in limine* for a stay a "dilatory plea".

7.7 He relied, as he did in his initial affidavit on an application of Rule 101 of the Law Society's rules. This rule is inapplicable and pertains to actions taken pursuant to a disciplinary hearing which, in this case, did not take place.

7.8 He objects to the Law Society in its replying affidavit having introduced a further set of complaints by the Respondent's doctor, who is also a client of his and then proceeds to deal with these complaints, annexing various bills of account.

7.9 He submits that "*it would be unfair and unjust for the court to force [him] to waive [his] right to remain silent at this juncture*" and that, should the review application succeed, the basis for the striking-off application would "fall away".

7.10 Regarding the offending conduct itself, the Respondent makes the following statements:

"I *would be in practice for a period of 32 years by the time of the hearing of this matter. I would also be fifty-nine years old and left with a year to reach retirement age. I submit that during that period, the criminal conviction is the only incident of lapse of personality trait in such a long period*"

"*I further submit that the "lapse of personality trait" is not proof that I am prone to further acts of dishonesty. This is an isolated incident in thirty two years of practice and I managed to practice cleanly for a period of eight years after such incident*"

"*While I appreciated the seriousness of the incident and the negative effects it has on my reputation, integrity and income, I still submit that only the estranged [complainant] was affected, for a short period, on her marital status, as I was, and the public at large was not prejudiced*"

"*The unfortunate act of dishonesty, which I have challenged through the review process, is one of a lapse of character which does not define who I am and contributes one black dot in the middle of a big white page.*"

[8] Ad the request for stay:

During the course of the hearing of the matter and, prior to hearing argument on the merits, we ruled that the request for a stay of the application was refused and

that the reasons would be contained in whatever judgment we deliver in respect of the main application. The reasons for the refusal are the following:

8.1 The usual practice where there are both civil and criminal proceedings pending which are based on the same facts, is to stay the civil proceedings until the criminal proceedings have been adjudicated on (see: Du Toit; Irvin & Johnson Ltd v Basson 1977 (3) SA 1067(T) at 435H – 436B, Kamfer v Millman and Stein NNO 1993 (1) SA 122(C) at 125E – 126D and Davis v Tip NO and others 1996(1) (W) at 1157 B-E).

8.2 The entitlement to the abovementioned "usual practice" is, however, subject to the following:

8.2.1 The accused person must show that he or she might be prejudiced in the criminal proceedings if the civil proceedings are heard first (see: Law Society, Cape v Randall 2013 (3) 437 SCA at [15] and;

8.2.2 There is an element of state compulsion requiring the accused to give evidence in the civil proceedings which impacts on his rights to silence (Law Society v Randall (*supra*) at [23] confirming Davis v Tip NO (*supra*) as commented in in Equisec (Pty) Ltd v Rodriques and Another 1999 (3) SA 113 (W) at 115A-C))

8.3 In the present instance, there is no element of state compulsion in the application by the Law Society. The respondent's rights in the criminal proceedings and his right to silence or protection against self-incrimination have already been exercised. His criminal trial

has already been concluded and all his rights of appeal have been exhausted. Insofar as he might still seek to pursue the finalization of his belated and pending review application, the contents of his founding affidavit therein indicate that he seeks to impinge the criminal proceedings on grounds other than his version of the merits. The review application hinges on allegations that the presiding magistrate is alleged to have had conversations with the magistrate presiding in the divorce matter and that the Garankuwa court had itself failed to call witnesses. Without venturing an opinion on the merits of that application, it can no longer impact on the Respondent's rights against self- incrimination and neither does that Applicant's application do so.

8.4 The following statement in Law Society, Cape v Randall (*supra*) at [32] is directly applicable to the Respondent's position:

"*The respondent in this case falls outside the category of parties who are subject to a compulsion to testify or to disclose their defence. He has a 'hard choice' to make as to whether he should respond to the allegations in the striking-off application or face the consequences of not responding.*"

8.5 It follows that the Respondent was not entitled to a stay and the oral request made from the bar (and in his answering affidavits) was duly refused.

8.6 I add to the above that, although the Respondent had already exercised his choice in his initial answering affidavit to avoid dealing with the merits of the application and the allegations against him, he had a second opportunity by delivering his recent

answering affidavit (from which I had already quoted portions above (and which affidavit together with annexures, comprise some 66 pages). During this second opportunity, he, in effect, admitted his wrongdoing but labelled it *inter alia* as a "lapse of personality trait."

[9] Merits: the offending conduct:

9.1 The Respondent's main, if not only, argument is in respect of the merits of the striking-off application pursuant to his conduct during his divorce from the complainant is that, once he is successful in his review application of his criminal conviction, the whole basis for the Law Society's application falls away. The Law Society however says that the Respondent's conduct pertaining to his divorce action merits a striking-off order, irrespective of whether there is a criminal conviction or not.

9.2 In determining whether the offending conduct ascribed to the Respondent has been established, the court is faced with the following:

9.2.1 The detailed evidence of the complainant in her affidavit wherein she claimed rescission of the divorce order;

9.2.2 The fact that her evidence in the criminal matter has been accepted as sufficient to constitute fraud beyond reasonable doubt and this acceptance has survived all appeal processes. Even if the conviction is set aside on technical grounds, the veracity of the evidence which she has rendered and the factual allegations made by her, have not been controverted.

9.2.3 Both her evidence in her rescission application and the fact that her evidence in the criminal trial has survived all appeal processes were left unanswered and uncontroverted by the Respondent in his answering affidavits in the striking-out application;

9.2.4 The contents of the Respondent's recent supplementary answering affidavit quoted in paragraph [7] above, in fact go much further and amount to admissions of having committed the offending conduct.

9.3 In the premises, the offending conduct, namely the committing of fraud by an attorney during the course of litigation, has been established on a preponderance of probabilities.

[10] Merits: Fit and proper to continue to practice?

10.1 The offending conduct is not as simple a matter as a "lapse" as contended by the Respondent. It in fact that consists of a number of consciously taken steps:

10.1.1 The respondent crafted his particulars of claim with deliberately falsely stating his then wife's address therein as a rental property while her true address was then still the previous matrimonial home;

10.1.2 To avoid service of the summons even taking place at this incorrect address, the Respondent further arranged for personal service at the Sheriff's offices. This was clearly designed to avoid any possibility of his then wife

being alerted of the impending action, should the Sheriff attempt to serve the summons on the incorrect address, then being occupied by the tenants of the Respondent and his then wife;

10.1.3 The Respondent then gave instruction to the Sheriff to serve on a person who the Respondent has arranged to falsely represent herself as his then wife. He therefore not only committed a fraud on the Sheriff beyond the summons and the particulars themselves but also roped in a third party and rendered her part of the fraudulent scheme as his later co-accused. He even gave her contact number to the Sheriff as if the number of his then wife;

10.1.4 When the Sheriff insisted on proof of identity, the Respondent and his co-accused even saw to this. Whether this was done by way of a duplicate ID-book or by way of a falsified one is unknown, but it matters not; the Respondent was part of it and accepted the Sheriff's return based on the fraud committed by him and his co-accused;

10.1.5 Reliant on the fraudulently obtained return of service, the Respondent committed a fraud on the Garankuwa court and, as an attorney and officer of the court, obtained a decree of divorce by default.

10.1.6 The main purpose of the fraud was then perpetrated by the Respondent obtaining a patrimonial order which he would not in law have been entitled to;

10.1.7 The consequences of the fraudulent conduct was thereafter kept hidden from the Respondent's wife / divorced wife until she later fortuitously and to her surprise finds out about it and became the complainant. One can but speculate what would have happened to the assets of the erstwhile joint estate, had she only found out about her divorce at some later stage.

10.2 I do not deem it necessary to burden this judgment with the long list of cases detailing and confirming the fact that the profession of an attorney is an honourable one and that by entering it, an attorney, when he takes the oath upon his admission, pledges to display total and unquestionable integrity to society at large and to the courts. He is expected to at all times conduct himself in his practice and profession with the highest possible degree of good faith. The Law Society (correctly) says that this implies that an attorney's conduct, submissions and representations must at all times be accurate, honest and frank.

10.3 When measured against the abovementioned standards which the Respondent had himself swore to uphold, then it must follow that his repetitive, intentional, improper and in fact, fraudulent conduct during his litigation with the complaint, renders him unfit to practice as an attorney.

10.4 In having reached the above conclusion, I find it unnecessary to consider the fresh complaint lodged by another of the Respondent's clients (in fact, his doctor) raised by the Law Society in its replying affidavit.

[11] Merits: Sanction:

11.1 Despite the use of the word "sanction", it should be remembered that, in deciding on whether an attorney ought to be removed from the roll or suspended from practice, the court is not first and foremost imposing a penalty. The main consideration is the protection of the public. Logic further dictates that if a court finds that an attorney is not a fit and proper person to practice, that he should be removed from the roll;

11.2 The general approach of our courts is further to strike an errant attorney from the roll where the misconduct involves dishonesty and to suspend him or her from practice where the misconduct did not involve dishonesty. See: Summerly v Law Society, Northern Provinces 2006 (5) SA 592 SCA and Law Society, Northern Provinces v Mogami 2010 (1) SA 186 SCA;

11.3 As already stated above, in the present instance, the Respondent's conduct involved dishonesty.

11.4 The Respondent says that, despite the dishonest conduct, he is "otherwise" an honest man. He says that he has neither before nor after the litigation with his wife behaved in a dishonest fashion. I have difficulty however with these platitudes. While they may or may not be factually correct, the Respondent only raises this plea and apparent acceptance of his wrongdoing in a supplementary answering affidavit. As an attorney, he should have realized from the outset that his conduct was improper. Apart from the fact that he should never done it, real contrition would have dictated that he should have owned up to the improper conduct at the first available

opportunity. Instead, he did not plead guilty and neither did he stop attacking the conviction of what he had now in effect admitted until all possible avenues of appeal had been exhausted. In addition, when all else failed, he now seeks to persist with a review application, accusing the magistrate of impropriety. Even if I were to ignore this conduct as conceivably the natural reaction of a person who does not which to be saddled with a criminal conviction, then there is no justification for the previous opposition to the complainant's rescission application. None of this smacks of contrition or a momentary "lapse". Even in these proceedings, the Respondent argued that his transgressions should be excused as only his then wife and not the public at large had suffered. He compounds this attitude by attacking the *custos mores* of his profession (the Law Society) for allegedly launching this application prematurely and he borders on accusing the Law Society of *mala fides*. Apart from the fact that such conduct is improper (see: Law Society, Northern Provinces v Mogami (*supra*) at [26]) it indicates a lack of appreciation of the seriousness of the offending conduct or the error of his ways. Such conduct further militates against the imposition of a mere suspension (see: Hepple v Law Society, Northern Provinces [2014] 3 All SA 408 (SCA) at [26] and Botha v Law Society, Northern Provinces 2009 (1) SA 227 (SCA);

11.5 In Malan and Another v Law Society, Northern Provinces 2009 (1) SA 216 (SCA) the learned judges of appeal said "if the court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal";

11.6 No exceptional circumstances such as, for example in Summerly v Law Society, Northern Provinces (*supra*), have been pointed out to us and therefore a striking-off is the appropriate sanction in this matter.

[12] Costs:

The Law Society has a statutory duty to approach the court and acts not as a "normal" litigant in its own interests. The general rule is that the Law Society is entitled to its costs, usually on an attorney and client scale. (see: Law Society of the Northern Provinces v Mogami (*supra*) and Law Society of the Northern Provinces v Sonntag 2012 (1) SA 372 (SCA))

[13] In the result, the following order is made:

1. Mpho Mofomme (the Respondent) is struck from the roll of attorneys of this Honourable Court;

2. The Respondent is ordered to immediately surrender and deliver to the registrar of this Honourable Court his certificate of enrolment as an attorney and conveyancer of this Honourable Court;

3. In the event of the Respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificates

are, is authorized and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court;

4. The Respondent is prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof and that the appointment of the *curator bonis* remains in force;

5. Johan van Staden, the head: members affairs of applicant or any person nominated by him, in his capacity as such, remains a suitable person to act as *curator bonis* to administer and control the trust accounts of the Respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the Respondent's account practice as an attorney and including, also, the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(32) 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 sub-section or in which monies in any manner have been deposited or credited (the said accounts being hereafter

referred to as the trust accounts), with the following powers and duties:

5.1 immediately to take possession of the Respondent's accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the Respondent was acting at the date of this order;

5.2 subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interest of persons having lawful claims upon the trust account(s) and/or against the Respondent in respect of monies held, received and/or invested by the Respondent in terms of section 78(1) and/or section 78(2) and/or section 78 (2A) of Act No 53 of 1979 (hereinafter referred to as trust monies), to take any legal proceedings which may be due to such persons in respect of incomplete transactions, if any, in which the Respondent was and may still

have been concerned and to receive such monies and to pay the same to the credit of the account(s);

5.3 to ascertain from the Respondent's accounting records the names of all persons on whose account the Respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors); to call upon the Respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditor has claim in respect of monies in the trust account(s) of the Respondent and, if so, the amount of such claim;

5.5 to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of such trust creditor or creditors, without prejudice to such trust creditor's or creditor's right of access to the civil courts;

5.6 having determined the amounts which he considers are lawful due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;

5.7 in the event of there any surplus in the trust account(s) of the respondents after payment of the admitted claims of all trust creditors in full, to utilize such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 78(3) of Act No 53 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by the Respondent to applicant, and, if there is any balance left after payment in full of all such claims, cost, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to the Respondent, if he is solvent, or if the Respondent is insolvent, to the trustees(s) of the Respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the Respondents, 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 Attorney Fidelity Fund;

5.9 subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and /or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out duties as curator; and

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

6. The Respondent is ordered to immediately delivers his accounting records, records, files and documents containing particulars and information relating to:

6.1 any monies received, held or paid by the Respondent for or on account of any person while practicing as an attorney;

6.2 any monies invested by the Respondent in terms of section 78 (2) and/or section 78 (2A) of Act No53 of 1979;

6.3 any interest on monies so invested which was paid over or credited to the Respondent;

6.4 any estate of a deceased person or an insolvent estate under curatorship administered by the Respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator

6.5 any insolvent estate administered by the Respondent as trustee or on behalf of the trustee in term of the Insolvency Act, No 24 of 1936;

6.6 any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by the Respondent as or on behalf of the liquidator;

6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

6.9 Respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the Respondents shall be entitled

to have reasonable access to them but always subject to the supervision of such curator or his nominee.

7. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the Respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, is empowered and directed to serach for and to take possession thereof wherever they may be and to deliver them to such curator.

8. The curator shall be entitled to:

   8.1 hand over to the person 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;

   8.2 require from the persons referred to in paragraph 8.1 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 the Respondent and/or the Respondent's

clients and/or fund in respect of money and/or other property entrusted to the Respondents provided that any person entitled thereto shall be granted reasonable access thereto and shell be permitted to make copies thereto;

8.3 publish this order or an abridge version thereof in any newspaper he consider appropriate; and

8.4 wind-up of the Respondent's practice.

9. The Respondent is hereby removed for the office as –

9.1 executor of any estate of which the Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estate Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

9.2 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 Estate Act, No 66 of 1965;

9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

9.4 liquidator of any company in terms of section 379(2) reads with 379(e) of the Companies Act, No 60 of 1973;

9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

9.7 administrator appointed in terms of section 74 of the Magistrate Court Act, No 32 of 1944.

10. The Respondent is hereby ordered:

10.1 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;

10.2 to pay the reasonable fees of the auditor engaged by applicant;

10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

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

10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

10.6 to pay the costs of this application on an attorney and client scale

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 (the 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 Attorneys Fidelity Fund shall constitute *prima facie* proof of the curator's cost and the Registrar is authorised to issue a writ of execution of the strength of such certificate in order to collect the curator's costs.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree.

JJ STRIJDOM
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 01 March 2018

Judgment delivered: 16 March 2018

APPEARANCES:

For the Applicant:	Adv. L Groome Instructed by: Rooth & Wessels Inc., Pretoria
For the Respondent:	Adv. R Baloyi Instructed by: M. N Moabi Attorneys, Pretoria