IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 91612/2021

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: NO
OF INTEREST TO OTHERS JUDGES: NO
REVISED

23 NOVEMBER 2022 .....

DATE SIGNATURE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

STEPHEN MANGOLELA First Respondent

MANGOLELA INCORPORATED ATTORNEYS Second Respondent

JUDGMENT

MOGALE, AJ

INTRODUCTION

1. The applicant is the South African Legal Practice Council ('The LPC'), exercising its powers as the statutory regulatory body regulating the professional conduct of legal practitioners in the Republic.

2. The first respondent Stephen Mangolela (first respondent), was admitted as an attorney of this court on 30 January 2001. According to the council's records, the first respondent is practicing as an attorney for his account as a single practitioner under the style of Mangolela Incorporated Attorneys, the second respondent (the firm or practice) at No 75 Xavier Road, Crown Gardens, Robertsham, Johannesburg, Gauteng Province.

3. The LPC seeks an order to have the first respondent struck from the roll of the legal practitioners.

4. This application is brought in accordance with the disciplinary procedures to adjudicate over his conduct which is alleged to be unprofessional, dishonorable, or unworthy, as provided for in section 144 (1) of the Legal Practice Act 28 of 2014 (the LPC).

5. On 20 January 2020, this court considered Part A of the application on an urgent basis. It suspended the first respondent from practicing for his account with further conditions pending the finalization of this application, which is Part B of the application.

6. The decision taken by the LPC to launch an application for striking off has its genesis in a number of complaints that it received against the first respondent, as well as other irregularities concerning his practice trust account.

7. The facts about this application are in the applicant's Founding Affidavit and Supplementary Affidavits. The first respondent filed his answering affidavits, which were not accompanied by any condonation applications. Upon hearing submissions from both parties, the court accepted the affidavit on the premise that it is in the interest of justice to dispose of this matter and to consider the representations made by both parties.

BACKGROUND FACTS

8. The facts in this matter are summarized as follows: The first respondent was admitted as an attorney of this court on 30 January 2001. He was stuck from the roll of attorneys on 13 February 2006 but subsequently readmitted as an attorney of this court on 04 December 2015. The first respondent's name is still on the roll of practicing Legal Practitioner, and he commenced practicing as an attorney on 18 May 2016.

9. According to the applicant, the facts and circumstances which prompted this application to this court include, but are not limited to, the following:

- There are substantial trust deficits in the first respondent's bookkeeping;
- The first respondent failed to report the trust deficits in his bookkeeping to the council;

- The first respondent affected irregular transfers from his trust banking account to his business banking account;
- The first respondent failed to account to clients in respect of trust funds;
- The first respondent delayed the payment of trust funds;
- The first respondent failed to keep proper accounting records in respect of his practice;
- The first respondent's accounting records did not accurately reflect the transactions in his trust ledger accounts;
- The first respondent failed to update and balance his accounting records;
- The first respondent failed to keep his accounting records available at his main office;
- The first respondent failed to extract lists of his trust creditor's balances and to compare the totals thereof with the available trust funds;
- Several of the ledger accounts of the first respondent's trust creditors reflected debit balances;
- The first respondent overreached clients;
- The first respondent failed to cooperate with the council and its inspectors in an inspection of his accounting records and practice affairs;
- The first respondent failed to comply with the requests of the council;
- The first respondent failed to reply to correspondence addressed to him
- The first respondent placed his trust creditors and the Legal Practice of Fidelity Fund at risk;

- The first respondent contravened several provisions of the LPA, the LPC Rules, the code of conduct, and the Rules for the Attorneys' Professions;

10. The council had received complaints against the first respondent that he failed to account for trust funds and delayed the trust funds' payments. The Council received complaints from Sopela and Mahlangu about the first respondent's administration of trust funds. After that, the applicant instructed a Chartered Accountant and auditor, Mr. DeLeeuw Swart, to visit and conduct an inspection of the first respondent's records and his practice and to report to the applicant in writing on 10 September 2019. In the Founding Affidavit, his qualification, experience, and expertise are recorded, confirming that he is an expert who is qualified to investigate the complaint and draft a report.

The Sopela Complaint

11. Sopela's erstwhile Attorney misappropriated an amount of R900 000,00 belonging to her. The first respondent was appointed to assist Sopela in a claim against the Attorneys Fidelity Fund. On 22 May 2017, the first respondent received an amount of R919 060,00 from the Attorneys Fidelity Fund, including interest. On 26 July 2018, Sopela filed a claim with the Law Society indicating that the first respondent only paid her R100 000,00. The first respondent provided Swart with the statement of account stating the following:

12.1. 7 July 2017 R100 000,00

12.2. 10 July 2017 R392 355,00

12.3. 7 August 2018 R200 000,00

12. The first respondent justified his fee by relying on the Contingency Fee Agreement between himself and Sopela. According to the records, the agreement between the parties was titled “Mandate And fee Agreement.” This

is not a valid contingency fee agreement by the parties, and the first respondent did not have the mandate to plunder 25% of the Sopela capital award. Swart also revealed the irregular withdrawals of Sopela's funds from the trust account and the existence of trust deficits, the irregular capturing of transactions in the first respondent's accounting records, and that the first respondent used the funds of other trust creditors to pay funds to Sopela.

The Mahlangu complaint

13. The first respondent was appointed to attend to the administration of the deceased estate of Mahlangu's late husband. The estate bank account was opened, and the first respondent was the sole person capable of transacting on the account. Alexander Forbes paid out a policy to the estate for R497,597

50. Mahlangu received a bank statement proving that the said amount was paid into the account, but there were already withdrawals made by the first respondent of R383 000,00 between 26 July and 03 August 2017. Mahlangu confronted the first respondent, who informed her that the monies would be safe in his trust account. A Sanlam Policy also paid additional funds to the estate bank account, which the first respondent withdrew. Mahlangu filed a claim against Legal Practitioners Fidelity Funds due to the misappropriation of those funds by the first respondent.

14. In his answering affidavit, the first respondent did not dispute

Swart's findings, and the first respondent did not dispute the withdrawals of the estate funds. He attempted to explain the withdrawal by alleging that they were towards the payments of estate creditors. To date, the first respondent has failed to provide

any detail in respect of the alleged creditors of the estate or proof that such creditors were indeed paid.

De Leew Swart Report

15. Swart attempted to contact the first respondent telephonically on 24 October 2018 and 05 November 2018, respectively, but he was informed that the first respondent was not in the office. He left messages, but the first respondent failed to contact Swart. On 30 November 2018, Swart managed to schedule a meeting with the first respondent to be held at his office on 07 December 2018. Swart could not inspect the first respondent's trust accounting records and investigate the complaints against him as the trust accounting records, and related documents were not available at his firm.

16. The first respondent undertook to obtain relevant accounting records and to revert to Swart but failed to honor his undertaking.

17. Swart attempted to contact the first respondent on 21 January 2019, 28 January 2019, 05 February 2019, 01 March 2019, and 10 March 2019, but on each occasion, he was informed that the first respondent was not available. Swart left messages, but the first respondent failed to return to Swart.

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18. Swart eventually communicated with the first respondent on 12

March 2019 and set an appointment for a records inspection on 22 March 2019. The first respondent promised to revert to the first respondent and confirm the

appointment, but he failed to revert. Swart attempted to contact the first respondent on 02 April 2019 and 16 April 2019, but he was unavailable and failed to return calls and messages.

19. Swart wrote a letter dated 07 May 2019 placing the first respondent on terms and informing him that should he fail to conduct him; Swart would finalize his report without him and submit it to the council. The first respondent failed to reply to the letter.

20. On 21 May 2019, Swart sent the same letter via email and caused a hard copy of the letter to be delivered to the first respondent, but he still needs to reply.

21. The first respondent eventually contacted Swart, and the inspection was conducted on 05 June 2019. The first respondent handed him a trust cash book and a trust creditors' ledger for 01 May 2016 to 30 September 2018. The records did not include all the records Swart had called for, for purposes of the inspection.

22. The first respondent undertook to email the outstanding records to Swart but failed to comply even after numerous requests from Swart. Swart communicated with the first respondent's secretary on 13 August 2019, whereby she undertook to reply to Swart's email and informed him that the first respondent was not well, but

nothing was ever forwarded to Swart.

23. Swart reached the following conclusions :

- The first respondent's failure to communicate and cooperate with the council and Swart constituted unprofessional, dishonorable, and unworthy conduct and a complete disregard by the first respondent of his professional body.
- That is was doubtful whether the firm's accounting records contained the correct transactions in respect of the trust creditor's ledger accounts.
- That the first respondent failed to open a trust ledger account for all the firm's trust creditors in his accounting records.
- That there were substantial trust deficits in the first respondent's bookkeeping, and these deficits will likely increase.
- The first respondent raised a contingency fee to which he was not entitled, and he overreached his client.
- The first respondent was not prepared to allow an inspection of his trust accounting records.
- The first respondent's accounting records are unreliable, and the possibility of further trust deficits exists.
- The first respondent's trust creditors and the Legal Practitioner Fidelity Fund is at risk.

According to his findings, the first respondent contravened the following provisions:

- Rule 35.13.6 of the Rules for the Attorneys' Profession due to the fact that the first respondent failed to retain his accounting records at no place other than his main office;

- Rule 47.1 of the Rules for the Attorneys' Profession due to the fact that the first respondent failed to reply to communication and correspondence addressed to him;
- Rule 35.9 of the Rules for the Attorneys' Profession due to the fact that the first respondent failed to update and balance his accounting records monthly;
- Rule 35.14.1 of the Rules for the Attorneys' Profession in that the first respondent failed to extract lists of his trust creditors' balance and to compare the total of the lists with the available trust funds;
- Rule 35.13.9 of the Rules for the Attorneys' Profession due to the fact that the first respondent's trusts creditors reflected debit balances and that there is a trust deficit in the respondent's bookkeeping in terms of section 86(2) of the LPC;
- Rule 35.13.8 of the Rules for the Attorneys' Profession due to the fact that there are trust deficits in the respondents' bookkeeping;
- Rule 35.13.10 of the Rule for the Attorneys' Profession due to the fact that the first respondent failed to report the trust deficits in his bookkeeping to the Council;
- Rule 35.12 of the Rule for the Attorneys' Profession due to the fact that the first respondent delayed the payment of trust funds to his clients and trust creditors;
- Rule 35.11 of the Rule for the Attorneys' Profession due to the fact that the first respondent failed to account to his clients and trust creditors;
- Rule 49.6 of the Rules for the Attorneys' Profession due to the fact that the first Respondent overreached a client and charged an

unreasonably high fee;

- Rule 35.5.3.1 of the Rules for the Attorneys' Profession due to the fact that the first respondent failed to keep proper accounting records in respect of his practice.

The Council decision

24. As a result, the Council decided to lodge an Investigation Committee of the Council, which considered the first respondents' conduct and Swart's report on 03 October 2019.

25. The Council concluded that whether each complaint is considered alone or all the complaints are considered cumulatively, the first respondent has made himself guilty of unprofessional, dishonourable, or unworthy conduct.

26. The Council further concluded that the first respondents' conduct reveals character defects that cannot be tolerated in a practitioner or officer of this Court and do not meet the standard of behavior, conduct, and reputation required of an attorney and an officer of this court. It was further concluded by the Council that, by virtue of his conduct, the first respondent has damaged and affected the good standing and reputation of the profession. He cannot continue to practice as an attorney.

The Respondents' Answering Affidavit

27. The respondents filed a Notice to Oppose and their answering affidavit on 13 January 2020. The first respondent requested the court to refrain from striking

him off the roll or suspending him from his practice as an attorney altogether but to instead suspend him from practicing for his account.

28. The first respondent pleaded that according to paragraphs A1.2 and A1.5 of the Notice of Motion, it leaves room for the suspension to be on such terms and with such conditions as the Honourable Court may deem appropriate pending finalization of the application, the first respondent agrees that the suggestion should be implemented.

29. The first respondent mentioned that though he has passed all the examinations and has four years of practice experience, he still feels that his knowledge, expertise, and practical experience of accounting within the law could have been better. This unfortunate circumstance was caused by the fact that no partner, associate, or experienced attorney could guide him.

30. He stated that he desperately needs a dispensation where he does not take responsibility for the accounting but is in a position to enhance his knowledge and experience.

31. The first respondent considered himself to be an attorney with sound knowledge of the law and experience; as a result, he pleaded that he continues with his practice whereby the applicant appoints

an attorney they trust to take responsibility for the practice and train him while practicing in his practice. The other possibility was to allow him to continue to practice as a professional

assistant at another firm of attorneys. The first respondent expressed his eagerness to go for further training if ordered to undergo training by the court.

32. Concerning Swart's report, the first respondent disputes that he was a recalcitrant, as described by Mr. Swart. It was mentioned that there were various instances where he assisted him diligently.

33. On 21 January 2020, Davis J issued the following order in the urgent court:**:** "1. *The applicant is found to be urgent within the ambit of Rule 6(12)(a) of the Rule of Court. Non-compliance with the Rule of Conduct is condoned.*

2. Stephen Mangolela is suspended from practicing as an attorney for his account pending the finalization of Part B of the Notice of Motion.

3. Stephen Mangolela is prohibited from handling or operating on his trust accounts as detailed in the paragraph hereof.

.4. Johan van Staden, the head: Members Affairs of the Applicant or any person nominated by him, is appointed as a curator bonis (curator) to administer and control the trust accounts of the first respondent, including accounts relating to insolvent and deceased estate and any deceased estate and any estate under curatorship connected with the first respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by the first respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated in section 78(2) and/or section 78(2A) of Act 53 of 1979 in which monies from such trust banking accounts have been

invested by virtue of the provisions of the subsections or in which monies in any matter have been

deposited or credited (the said account herewith, being referred to as the trust account)

5. The said curator will have the powers and duties set out in paragraphs 1.6.1, 1.6.2, 1.6.3, 1.6.4, 1.6.5, 1.6.6, 1.6.7, 1.6.8, 1.6.9, and 1.6.10 of the Notice of Motion.

6. The first respondent will immediately deliver to the curator referred to in paragraph 4 his accounting records, records, files, and documents containing particulars of and information relating to the items in paragraphs 1.7.1-1.7.9 of the Notice of Motion. The aforegoing is subject to the proviso that as far as such accounting records, records, files, and documents are concerned, the first respondent shall be entitled to have reasonable access to them but always subject to the supervision of the curator or his nominee.

7. Should the first respondent fail to comply with the provisions of paragraph 5 of this order on service thereof upon him after a return by the person entrusted with the service thereof, that he has been unable to effect service thereof, the sheriff for the district in which such accounting records, records, files and documents are, is empowered and directed to search for and to take possession thereof wherever they may be and deliver them to the curator.

8. The first respondent be and is hereby removed from the offices detailed in paragraphs 1.9.1, 1.9.2, 1.9.3, 1.9.4,1.10, and 1.11 of the Notice of Motion.

9. The curator shall be entitled to:

9.1. Handover 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 an agreement, in respect of fees and disbursements due to the second respondent.

9.2. Require the persons referred to in paragraph 9.1 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 first respondent and/or first respondent client and/or funds in respect of money and/or other property entrusted to the first respondent, provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof.

9.3. Publish this order or an abridges version thereof in any newspaper he considered appropriate

9.4. Wind up the first respondents'

practice 10.

10.1. If there are any trust funds available, the first respondent shall, within six (6) months after having been requested to do so by the curator within the such more extended period as the curator may agree to in writing, satisfy the curator by means of the submission of the taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him in respect of his former practice.

10.2. The first respondent shall be entitled to recover such fees and disbursements.

11. Should the first respondent fail to comply with paragraph 10 above, the first respondent shall not be entitled to recover such fees and disbursements from the curator without prejudice to any rights as he may have against the trust creditor concerned for payment or recovery thereof.

12. A certificate issued by the director of the Attorneys Fidelity Fund shall constitute prima facie proof of the curator's cost, and the Registrar is authorized

to issue a Writ of Execution on the strength of such certificate in order to collect the curator's cost.

13. The first respondent on the attorney and client scale shall pay the cost of this application."

34. The application for final relief, Part B, for the striking of the first respondent's name from the roll of attorneys was enrolled for a hearing on 01 September 2020. The Notice of set down was served on the first respondent on 18 February 2020. A few days before the hearing, the first respondent served an application for leave to file a further answering affidavit, his heads of arguments, and his practice note. The court permitted the filing by the first respondent of an additional answering affidavit. As a result, the hearing scheduled for 01 September 2020 was postponed *sine die.*

35. This matter was placed on the roll for hearing on 06 May 2021. The first respondent, once again, applied for the matter to be postponed *sine die*. The first respondent was ordered to apply for condonation for the late filing of further affidavits, and the matter was postponed. The Part B application for striking the first respondent's name from the roll was enrolled again for hearing on 20 October 2022. The first respondent filed supplementary answering affidavits to the supplementary founding affidavit filed by the Council on 16 September 2022, a delay between 6-7 months, explaining that he could not afford to pay for legal representation to assist him in

compiling further affidavits.

Non-compliance with suspension order

36. The order suspending the first respondent from practicing for his account also caters to conditions under which the first respondent could be employed, which authorized him to accept employment as an attorney from any attorney the curator appoints to conduct or wind down the second respondent. The order also appoints the relevant curator and inter alia entitles the curator to wind up the first respondent's practice.

37. The first respondent has taken up employment with AM Nduna Attorneys, a firm that the curator did not appoint to conduct or wind down the second respondent. Any agreements with the curator did not precipitate the appointment of A M Nduna. The first respondent should have provided the curator with his accounting records, records, and files. The first respondent retained possession of his entire practice, its clients' files, accounting records, and documents and continued to practice from the same address.

38. The first respondent blatantly flouted the provisions of the suspension order.

His refusal to cooperate frustrated the curatorship and the curator's ability to assist the Legal Practitioners Fidelity Fund (The Fund) in assessing claims against it by the first respondent's erstwhile clients. The first respondent patently retains his client's files relevant to this application.

Evidence illustrating that the first respondent has continued to render services to clients of his firm after the suspension order:

Fidelity fund claim: P Z Taleni

39. Taleni engaged the first respondent in December 2018 to file a condonation application and an application for leave to appeal her sentence. She deposited an amount of R200 000,00 into the first respondent's trust account in January 2019. The first respondent informed Taleni that he had briefed an Advocate to attend to a matter, but when Talani asked for proof thereof, she was not provided with same. Taleni claimed against The Fund on 29 February 2020. At that stage, the condonation application and the application for leave to appeal had not been prepared.

40. The first respondent responded, "The money had been utilized to obtain a record of proceedings to pursue an appeal on behalf of the deponent and also pay counsel's fee. I also debited fees. The aforegoing added up to an amount over R200 000,00. I annex an Annexure X1, a statement of account I have rendered". The Statement of Account does not disclose how the individual fees have been calculated; it does not contain adequate narrations; it contains patently excessive and inflated charges; it does not record any invoice by counsel that was allegedly briefed or any invoice for the payment of the transcript. The following appears *inter alia* from the statement:

40.1. R41 813,30 fees for alleged travel

40.2. R10 003,00 fees for the perusal of 13 e-mails

40.3. R6 001,00 fees for drawing one letter and five emails

40.4. R18 000,00 fees for three consultations with counsel

40.5. R13 000,00 fees for consultation with the client

40.6. R88 000,00 fees for the perusal of transcripts

40.7. R14 000,00 fees for four attendances (one of which is for R6 000,00 to request missing transcripts.

This evidence proves that the first respondent not only ignored the court order but also that he misappropriated Taleni's Funds. The statement of account was prepared a year after he had misappropriated Taleni's funds. Due to the suspension order, the first respondent was not supposed to handle the matter, and he misappropriated these funds.

Fidelity fund claim: G M Thobejane

41. The first respondent represented Thobejane in civil and criminal matters.

Thobejane paid R246 800,00 to the first respondent's trust account for his fees and an additional amount of R10 000,00 for bail (that the first respondent refused to refund). Thobejane was dissatisfied with the fees and disbursements levied by the first respondent and referred the matter to the Council, requesting an assessment of the fees. The matter was referred to a Fee Dispute Resolution Committee of the Council on 13 November 2020. A decision was made on 04 December 2020 that the first respondent must refund an amount of R49 265,00 (amount paid less charges allowed) to Thobejane. The first respondent was not entitled to the additional amount of R10 000,00 for bail, and his appropriation was misappropriation. The first respondent could not justify R74 000,000 of disbursements he attempted to levy upon Thobejane, and his abovementioned conduct

demonstrates dishonesty and theft.

42. The first respondent failed to abide by the Committee's determination and has not refunded Thobejane, and it has been almost two years since the order was made. His affidavit states that he only became aware of the order on 01 April 2021 and will repay the funds before this application is heard.

Complaint: GG Nzaramba & TP Tshelane

43. Nzaramba and Tshelane are husband and wife who instructed the first respondent on 18 April 2018 to bring an application for their release on bail. The first respondent successfully applied for their release on bail of R5 000,00 each. The respondent requested an amount of R10 000,00 each for his fees which were paid in cash. During their consultation with the first respondent regarding his handling of the criminal trial, the first respondent requested an amount of R100 000,00 each, which was paid to the first respondent, and later an additional amount of R50 000,00 for his services. The complainants allege that the criminal matter was repeatedly postponed as the first respondent failed to prepare properly and did not keep them abreast with developments.

44. Nzaramba and Tshelane were found guilty in March 2021. On the same day, they were informed by the Prosecutor that if they raised and paid an amount of R3 500 000,00, the complainant in the criminal matter would not proceed. They raised an amount of R500 000,00, and the respondent advised them to deposit those funds into

a banking account and undertook to negotiate payment terms with the complainant. R500 000,00 was paid to the first respondent on 15 March 2021. When the couple did not see any progress from

the first respondent's side, they terminated the first respondent's mandate in May 2021 and instructed the first respondent to refund their monies.

45. Between May 2021 and September 2021, the couple met with the first respondent on numerous occasions to discuss the refund. The first respondent made several undertakings to repay, but that never materialized. Afterward, the first respondent informed the Nzaramba and Tshelane that he had appropriated their funds for purposes of the fees allegedly owed to him. The first respondent fabricated invoices reflecting exorbitant fees to contrive liability on the part of Nzaramba and Tshelane to justify his failure to refund their monies. The first respondent's fees are patently inflated, and no justification is provided.

46. Nzaramba and Tshelane complained with the Councill, and the Council called upon the first respondent to submit relevant documents and records relating to the complaint. The first respondent failed to comply with the direction. During the inquiry, it was confirmed that the R500 000,00 was deposited into one of the first respondents' Nedbank accounts. The first respondent's receipt of funds of trust in nature in an account other than a trust account is highly irregular and is a contravention of Section 86(2) of the LPC. Nzaramba and Tshelane also confirmed several payments made to the first respondent during the proceedings in cash e-wallet and

other forms.

47. The first respondent's Statement of Account for Nzaramba and Tshelane reveals the following:

- 20 April 2018- R200 000,00 for bail application for both clients
- Sixteen appearances in court with the fee of R4 000,00 were duplicated, and the first respondent statement reflects the total of R128 000,00.
- 08 November and 02 December 2019, the first respondents were charged R160 000,00 (R40 000,00 per client per day) for their attendance at court
- On 12 September and 08 November, 2019 first respondents charged R48 000,00 (R24 000,00 per client) for their trial preparation. The 08 November 2019 claim is a duplication.
- 28 May 2021 first respondent charged R18 000,00 to advise the court that his mandate was terminated
- On 11 March 2021, the first respondent charged R12 000,00 (R6 000,00 each) for noting the Judgment.
- The first respondent charged R85 334,00 fees (R42 667,00) for traveling to court.

48. The first respondent failed to address the circumstances giving rise to him receiving R500 000,00 deposit into his Nedbank account. His failure to account proves that the first respondent appropriated the funds for his benefit, which constitutes theft and dishonesty. As a result, the Council found that the first respondent was obliged to repay the amount of R500 000,00 to Nzaramba and Tshelane. He undertook to repay an initial amount of R250 000,00 and pay the

balance later. The evidence illustrated that the first respondent

misappropriated the R500 000,00 and that his invoices are fabricated ex-post facto justification for misappropriating his client's funds.

Complaint: Yibo Jia

49. Jia instructed the first respondent on 09 July 2021 to act in his criminal matter and to prepare a legal document (affidavit). Jia paid R35 000,00 to the first respondent, and the monies were paid into the first respondent's Nedbank account, which is not his former trust banking account nor the trust account of AM Nduna. Subsequently, the first respondent prepared the affidavit but failed to assist Jia and answer his telephone calls. Jiya submitted a complaint against the first respondent on 06 January 2022 to the Council.

50. The first respondent alleged that the R5000,00 received from Jia related to the drafting of the affidavit and the R30 000,00 related to an unrelated business matter for which the monies were received in the business account of the first respondent's erstwhile firm. Any evidence does not support the first respondent's allegations. The statement of account confirms the receipt of the money from Jia, and evidence proves that this money was of a trust nature. The first respondent's conduct further confirms his circumvention of the suspension order.

51. The Council called upon the first respondent to produce the accounting records, records, and documents relating to Jia, but the first respondent failed to provide the documents requested.

ISSUE TO BE DETERMINED

52. In exercising our judicial discretion, this court has to consider the threefold inquiry process: firstly, the court must establish whether the alleged offending conduct by the legal practitioner has been established; secondly, whether the person concerned is fit and proper to practice as a legal practitioner and if it has been established that the practitioner is not fit and proper to practice, the court must lastly, consider the sanction to be imposed.

Factual inquiry

53. The Court's discretion must be based upon the facts before it, and the facts in question must be proven upon a balance of probabilities. The facts upon which the Court's discretion is based should be considered in their totality. The Court must not consider each issue in isolation[1].

54. The court had to weigh the complaint against the conduct expected of a legal practitioner. In exercising our judicial discretion, this court has to establish if the first respondent committed an offending conduct firmly. In **Jasat v Natal Law Society**[2] it *was held that "the Court's role is not to impose a penalty, but the prime consideration is to ensure that the interest of the public is protected.*

55. The first respondent does not dispute Swart's findings and does not

dispute that he failed to comply with the order dated 21 January 2020. He does not

[1] Jasat v Natal Law Society 2000 (3) SA 44 SCA par 10
[2] 2000 (3) SA 44 SCA at 51

dispute committing other offenses relating to trust monies during the period of suspension, which includes theft of trust monies, overreaching, irregular payments, and inability to account for trust monies. He admitted the alleged offending conduct and pleaded not to be removed from the roll but to be suspended from practicing for a period specified by this court.

56. Based on the first respondent's concessions and the evaluation of the evidence presented, I find that the applicant has proved on a balance of probabilities that the alleged offending conduct by the first respondent did occur.

Fit and proper to practice as a legal practitioner.

57. **In General Council of the Bar of South Africa v Geach & Others**[3]**,** the Supreme Court of Appeal said the following in relation to lawyers: "*after all, they are the beneficiaries of a rich heritage, and the mantle of responsibility that they bear as the protectors of our hard-won freedom is without parallel. As officers of our Court, lawyers play a vital role in uploading the Constitution and ensuring that our system of justice is both efficient and effective. It, therefore, stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them.*

58. The applicant argued that when the Courts admit attorneys to the profession, the attorney is put in a position to conduct matters of trust with the public. The attorney occupies a position of great

confidence and power, and the court is

[3] 2013 (2) SA 52 (SCA) at para 87

entitled to demand a very high standard of honor from him in the profession. The law expects him to act as an agent for others, which requires the highest possible degree of good faith. The applicant further argued that the first respondent's conduct was a gross deviation from the standard of conduct expected from an attorney. It reflects character defects that cannot be tolerated in practitioners and officers of the Court and do not meet the standard of behavior, conduct, and reputation required of attorneys and officers of the court. According to the submissions made by the applicant, the first respondent can no longer be considered a fit and proper person to be allowed to practice as a member of a respected and honorable profession and should be removed from the roll of attorney.

59. The first respondent argued that the discretion lies with this court after evaluating the evidence to determine the fitness and properness of the first respondent. Suppose this court finds that the first respondent is not a fit and proper person to continue practicing as an attorney. In that case, the court should, however, not strike his name from the roll, but should allow him to be rehabilitated while continuing to practice under the guidance of another attorney.

60. The first respondent rightly acknowledged that he had failed to keep proper accounting books in compliance with the Act and the Rules. His books of account were incompatible with the profession's requirements, and to describe this situation as chaotic is

appropriate. Every practitioner should be able to handle what is expected of him when it comes to keeping proper accounts.

61. The Act, the rules of the appellant, and the courts have repeatedly explained the requirements in the following terms[4]:

> "*The rule thus obliged the keep proper records and books of account in accordance with generally accepted accounting practice and procedure containing a full and accurate record of all financial transactions and distinguishing manner between trust account and business transactions. An undigested mass of figures from which it may be possible to find out something (or, indeed, everything) about the condition of the trust account is not keeping proper books in a business sense. It is no answer to say, "I have no bookkeeper, or my accountant is too busy. If any attorney cannot deal properly with a matter, he must undertake it. This is an absolute rule; it has to be so – the public is at risk. Thus it is so that the particulars and the information of the trust money must be contained in the narrative of the entries of the books of account, and it should not be necessary to resort to documents and files obtained such information".*

62. Furthermore, it is a principle issue that the fees charged by attorneys must be reasonable. The first respondent's fee structure was inconsistent and lack of uniformity. One who charges an unreasonable fee is guilty of overcharging or overreaching[5]. Overreaching involves an abuse of a person's status as an attorney by taking advantage of the personal gain of the person paying. As put in the **Society of Advocates of South Africa (Witwatersrand Division) v**

[4] Law Society, Transvaal v Matthwes 1989(4) SA 389 (T) at 394 G-I
[5] General Council of the Bar of South Africa v Geach par 131

Cigler[6], *it was held that charging excessive fees is a breach of the Rules and a serious concern*[7].

63. The first respondent took advantage of the client's vulnerability and desperation by exerting power. He demanded that they deposit the money in his trust account or other business accounts, knowing he would never render the expected service. This conduct was clearly illustrated in the claim against Nzaramba and Tshelane, where the first respondent was paid an amount of R500 000,00 and failed to render services as expected. After a complaint was laid with the Fund, the first respondent compiled a statement of account overcharging the clients and overreaching himself.

64. The first respondent was duty-bound to act in the interest of his clients and good faith. He repeatedly failed to comply with the legislation and the code of conduct laid down by the Legal Practice Council. He was even contemptuous in several instances.

65. **In Vassen v Law Society of the Cape**[8] *the attorney had stolen money by convincing an insurance company to pay the proceeds due under a life insurance policy to himself instead of to the beneficiary. He then used the money for personal purposes and denied doing so despite clear evidence to the contrary. The court ruled that he was not a "fit and proper" person to practice. Honesty, reliability, and integrity are expected of an attorney. The*

[6] Ibid par 132

[7] Society of Advocates of South Africa par 354
[8] 1998(4) SA 532 (SCA)

lawyer is required to present the client's case in the best possible light with indifference to the morals of the case[9]

66. The first respondent failed to comply with the fundamental obligations and duties as a legal practitioner and has committed numerous serious acts of misconduct. The first respondent abused the position of trust afforded to him by the membership of the profession to extract an unjust benefit from the members of the public that entrusted him with their affairs. The first respondent is a repeat offender, shameful and bringing deep embarrassment to the profession.

67. If this court allows the first respondent to continue handling trust monies, that will endanger his clients and the fidelity fund. The first respondent's conduct is deliberate, persistent, and not limited to his fees and accounting. Therefore, based on this evidence, I find the first respondent not fit and proper to practice as a legal practitioner.

Sanction

68. In mitigation of the sanction imposed by this court, the first respondent pleaded that he be suspended for a specific period determined by this court and allowed to accept employment as an attorney from AM Nduna Attorneys to be

[99] Eshete “Does a lawyer’s character matter? In Luban D (ed) The Good Lawyers’ Roles and Lawyers’ Ethics (1984) 270-285 at 272

rehabilitated. The previous order of suspension was very harsh, and it was never the intention of the first respondent to prejudice clients.

69. The applicant argued that the first respondent failed to place exceptional circumstances before the court for an order of suspension instead of removal. It was argued that there was no remedial action to correct what the first respondent had done. It was submitted that the first respondent must be removed from the roll of attorneys.

70. I find that the first respondent has been dishonest, has shown a lack of integrity and openness, and has shown no insight into the extent of his transgression. An attorney should not have these character traits. An order suspending him from practicing for a specific period would only be appropriate if there were some way the court could expect him to overcome these character traits during his suspension. It is simply impossible to look into the future and know that the public would be adequately protected after a suspension period. Hence the logical and sensible approach must be that the first respondent be prevented from practicing until he can convince a court that he has reformed to the point that he could be allowed to practice again[10]

71. I am of the view that the admission by the first respondent to the

allegations alluded to be serious. By virtue of the Legal Practice Act, his conduct is considered a serious transgression and offenses punishable. I find that the

[10] Botha v Law Society (2009) ZASCA par 23

misappropriation of funds of client's funds constitutes theft, and the respondent concealed this conduct by misrepresenting and manipulating clients so that he would assist them with their matters. This portrayed dishonestly and a lack of integrity on his part.

72. The first respondent lacks a sense of responsibility, honesty, and integrity, which are characteristics of an attorney. The first respondent doesn't possess any of the above. This court has considered that the purpose of these proceedings to strike the first respondent from the roll is to protect the rules regulating the profession rather than punishing the transgressor. In the circumstances, I find that removing the first respondent's name from the roll of a legal practitioner is justified.

COSTS ORDER

73. This court has taken into account that the applicant is entitled to costs. It is trite that in applications of this nature, there is no *lis* between the applicant and the respondents. An order has been sought that the respondent pays the costs of this application on the scale between attorney and client. The applicant also sought an order that the respondent pays the costs of the condonation application, the striking out of the application, and those costs reserved on 01 September 2020 and 06 May 2021. The first and second respondents did not oppose the cost order.

In the premises, I propose the following order:

1. The first respondent, **Stephen Mangolela (first respondent**), is struck from the role of legal practitioners.
2. The first respondent must surrender and deliver to the Registrar of this Honourable Court his certificate of enrolment as an attorney of this honourable court.
3. In the event of the first 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 certificate is, is authorized and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court
4. The first respondent is prohibited from handling or operating on his trust account(s) as detailed in paragraph 5 hereof.
5. Johan van Staden, the head: Risk Compliance of the application, or any person nominated by him in his capacity, as such, remains a suitable person to act as curator bonis to administrate and control the trust account(s) of the first respondent, including statements relating to insolvent and deceased estate and any deceased estate and estate under curatorship connected with the first respondents' practice as an attorney and including, also, the separate banking accounts opened and kept by the first respondent at a bank in the Republic of South Africa in terms of Section 86 (1) and 86(2) of the Legal Practice Act and/or any separate savings or interest-

bearing accounts as contemplated by section 86(3) and 86(4) of the LPC, in which monies from such trust banking accounts have been invested by virtue of the provisions of the

said sub-sections 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 take possession of the first respondents' accounting records, records, files, and documents as referred to in paragraph 6 and subject to the approval of the board of control of the Legal Practitioners Fidelity Fund (the fund) to sign all the 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 first Respondents was acting the date of this order.

5.2. Subject to the approval and control of the board of control of the Fund And where the monies have been paid Incorrectly and unlawfully from the undermentioned trust accounts, to recover and to receive and, if necessary, in the interest of persons having lawful for claims upon the trust accounts and or against the first respondent in respect of monies held, received, and or invested by the first respondent in terms of section 86(3) and 86(4) of the LPA (the trust money), 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 the first

respondent was and, may still have been concerned, and to receive such monies and to pay the same to the credit of the trust accounts.

5.3. To ascertain from the first respondent's accounting records the names of all persons of whose account the first respondent appears to hold or to have received trust monies (Here in after referred to as trans creditors) End to call upon the first respondent to furnish him, Within 30 days of the date of service of this order or such further period as he may agree to in writing With the names, address is an amount due to all trust creditor's.

5.4. To call upon such trust creditors to furnish such proof, information, and or affidavit as he may require enabling him, acting in consultation with and subject to the requirements of the board of control of the fund, to determine whether any such trust creditors. Has a claim in respect of monies in the trust accounts of the first 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 any such trust creditors or creditors without prejudice to such trust creditors or creditors' rights of access to the civil courts.

5.6. Having determined the amount which he considered lawfully due to the trust creditors to pay such claim in full but subject, always to the approval of the Board of Control of the Fund.

5.7. In the event of there being any surplus in the trust

accounts of the first respondent after payment of the admitted claims of all the trust creditors in full, to utilize such surplus to settle or reduce, firstly, any claim of the fund in terms of Section 86(5) of the LPA in respect of any interest therein referred to and, secondly, without

prejudice to the right of the creditors of the first respondents, the cost, fees, and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by the first 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 the first respondent, if he is solvent or if the first respondent is insolvent, to the trustees of the first respondent's insolvent estate.

5.8. In the event of there being insufficient trust monies in the trust banking accounts of the first 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 balances which may be available in the trust banking account among the trust creditors.

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 an attorney, counsel, accountant, and or any other persons, where considered necessary, to assist him in carrying out the duties of curator.

5.10. To render from time to time as curator returns to the

Board of Control of the fund showing how the trust accounts of the first respondent have been dealt with until the board notifies him that he may regard his duties as curator terminated.

6. That the first respondent 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 first respondent for or on account of any person while practicing as an attorney.

   6.2. Any monies invested by the first respondent in sections 86(3) and 86(4) of the LPA.

   6.3. Any interest on monies so invested which was paid over or credited to the first respondent.

   6.4. In the estate of a deceased person, an insolvent estate, or an estate under curatorship administered by the first respondent, whether as executor or trustee or curators or on behalf of the executor, trustee, or curator.

   6.5. Any insolvent estate administered by the first respondent as trustee or on behalf of the trustee in terms of the Insolvency Act 24 of 1936.

   6.6. Any trust administered by the first respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act No 57 of 1988.

   6.7. Any company liquidated in terms of the Company Act No 61 of 1973, administered by the first respondent as or on behalf of the liquidator.

   6.8. Any close cooperation liquidated in terms of the Close Corporation Act 69 of 1984, administered by the first

respondent as or on behalf of the liquidator, and

7. Should the first respondent fail to comply with the provisions of the preceding paragraph of this order upon service on him or a return to the effect that service was not possible is returned, the sheriff for the district, in which such accounting records, records, files, and documents are situated is empowered and directed to search for and to take possession thereof whatever they may be and to deliver them to the curator.
8. The curator shall be entitled to:
    8.1. Hand over to the persons entitled thereto all such records, files and documents provided. That a satisfactory written undertaking has been received from such person to pay any amount either determined on taxation or by agreement in respect of fees and disbursements due to the firm.
    8.2. Require the person referred to in paragraph 8.1 to provide any such documentation or information that he may consider relevant in respect of a claim or possible or anticipated claim against him and or the first respondent and or the first respondent's client and or fund in respect of money and or other property entrusted to the first respondent provided that any person entitled thereto shall be granted reasonable access thereto, and shall be permitted to make copies thereof.
    8.3. Publish this order or an abridged version day off in any newspaper he considered appropriate, and

8.4. Wind- up the first respondent’s practice.

9. The first respondent is hereby removed from office as-

9.1. The executor of any estate of which the first respondent has been appointed in terms of section 54(1)(a)(v) of the administration of Estate Act 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 66 of 1965.

9.3. Trustee of any insolvent estate in terms of section 59 of the Insolvency Act 24 of 1936.

9.4. Liquidator of any company in terms of section 379(2) read with 379 of the Company Act 61 of 1973

9.5. Trustee of any trust in terms of Section 20(1) of the Trust Property Control Act 57 of 1988.

9.6. The liquidator of any close corporation appointed in terms of section 74 of the Close Cooperation Act 69 of 1984.

9.7. The administrator appointed in terms of Section 74 of the Magistrates Court Act 32 of 1944.

10. The first respondent is hereby directed.

10.1. To pay in terms of section 87(2) of the LPA the reasonable cost of the inspection of the accounting records of the first respondent.

10.2. To pay the reasonable fees and expenses of the curator.

10.3. To pay the reasonable fees and expenses of any persons

consulted and or engaged by the curator as aforesaid.

10.4. To pay the expenses relating to the publication of this order or an abbreviated version thereof.

10.5. To pay the cost of this application on an attorney and client scale.

Including the cost of the condonation applications, the striking out application, and those costs reserved on 01 September 2020 and 06 May 2021.

11. If there are any trust funds available, the first respondent shall, within 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, satisfy the curator by means of submission of the tax bill of costs or otherwise of the amount of the fees and disbursements due to the first respondent in respect of his former practice and should he fail to do so, he shall not be entitled to receive such fees and disbursements from curator without prejudice, however, to such rights, if any, as he may have against the trust creditors concern for payments or recovery thereof.

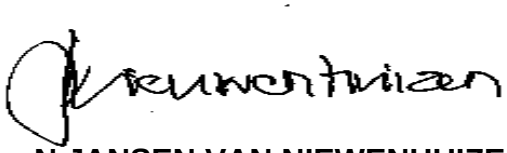
12. A certificate issued by a director of the Fund shall constitute prima facie proof of the curator's costs, and the Register is authorized to issue a writ of execution on the strength of such certificate in order to collect the curator's cost.

K J MOGALE

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, PRETORIA

I agree and it is so ordered.



N JANSEN VAN NIEWENHUIZEN

JUDGE OF THE HIGH COURT

PRETORIA LOCAL DIVISION,

PRETORIA

Date of hearing: 20 October 2022

Date of judgment: 23 November 2022

APPEARANCES

COUNSEL FOR THE APPLICANT: MR. L GROOME

ATTORNEYS FOR THE APPLICANT: RW ATTORNEYS INC

COUNSEL FOR THE RESPONDENT: ADVOCATE Q PELSER SC

ATTORNEYS FOR THE RESPONDENT: AM NDUNA ATTORNEYS