



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

CASE NO: 12992/2017

DELETE WHICHEVER IS NOT APPLICABLE

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

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DATE

.....

SIGNATURE

In the matter between:

**THE LAW SOCIETY OF THE
NORTHERN PROVINCES**

Applicant

and

JUDGMENT

PAULUS LEPEKOLA SAMUELS

Respondent

TOLMAY J

1. This is an application for the removal of the respondent from the role of legal practitioners. On 21 July 2017, the respondent was suspended from practise as a legal practitioner pending the finalisation of the application for the removal of his name from the role of legal practitioners. On 29 June 2020 the name of the respondent was removed from the role of legal practitioners. On 8 July 2020 the respondent filed an application for leave to appeal the court order of 17 June 2020 and on 27 May 2021 the application for leave to appeal was dismissed. The respondent filed an application for leave to appeal to the Supreme Court of Appeal on 20 August 2021 leave was granted and on 7 December 2022 the appeal was upheld and the order of 17 June 2020 was set aside and the matter was referred back to this court for determination by a differently constituted bench.
2. The respondent was admitted as an attorney of this court on 19 November 1991 and practised as a sole practitioner under the name and style of P L Samuels Attorneys. His name is still on the role of legal practitioners of this court.
3. The genesis of this application can be found in a complaint laid by a Ms. Lydia Mabaso (the complainant). The respondent was instructed by her to proceed with a claim against the Road Accident Fund (RAF) following injuries she had sustained in a motor vehicle accident that occurred on 26 December 2007. A contingency fee agreement was concluded between the respondent and the complainant, however

the complainant was never furnished with a copy thereof. The complainant said that the respondent failed to furnish her with progress report on her matter. The past medical expenses and general damages of the complainant's claim was settled in the amount of R170 657.40.

4. The claim in respect of future loss of earnings was enrolled for hearing on 5 February 2015. On that date the complainant attended the hearing and was informed by the respondent that the matter had been settled on the basis that an amount of R206 300.60 would be paid in respect of her future loss of earnings. The respondent however failed to explain the terms of the settlement to her. Despite numerous attempts by the complainant to enquire about payment of the amount the respondent failed to revert to her and on other occasions indicated that payment had not been processed by the RAF.

5. Subsequently, the complainant approached the RAF and was informed that the payment in the amount of R206 300.60 was made to the respondent on 11 June 2015. The complainant confronted the respondent, and he advised her that he was unaware of what had transpired in the matter and undertook to report to her once he had received feedback from the RAF. She however informed him that according to the RAF the money was paid into his account on 11 June 2015. The respondent then changed his stance and undertook to revert to the complainant once he had determined the amount payable in respect of the outstanding expenses.

6. The complainant then requested her file from the respondent in order to appoint new attorneys to assist her with the matter. The respondent furnished the complainant with a Notice of Taxation and a Bill of Costs. On 20 November 2014 the respondent informed the complainant that he handled the matter on a contingency fee basis and that he had appropriated an amount of R170 657.40 of the money awarded to the complainant for his fees and disbursements.

7. The complainant's newly appointed attorneys, Fluxman's, addressed a letter to the respondent and requested a copy of the contingency fee agreement, a copy of the settlement agreement, a breakdown of how the amount of R170 657.40 was appropriated together with statements invoices and other supporting documentation. Fluxman's also informed him that a manuscript insertion was made on the draft court order that there was no contingency fee agreement and he was requested to advise them who inserted the clause and on whose instruction. They furthermore also queried the notice of taxation furnished to the complainant. The respondent failed to respond to this correspondence.

8. The complainant received telephone calls from expert witnesses who acted in her matter demanding payment of the accounts. The only inference that can be drawn from this is that contrary to what was stated by the respondent, he failed to settle disbursements. This is confirmed by a letter from Karel Els Attorneys, attached to the founding papers that an amount of R19 444.01 was still payable to their client

Bonitas Medical Aid. The applicant pointed out that this amount is not reflected in the Bill of Costs.

9. The respondent initially failed to respond to correspondence addressed to him by the applicant. In his belated response, the respondent indicated that although he agreed to a contingency fee agreement it was not “lodged and registered”. He also denied any erratic updates to the complainant, that he did not account to the complainant and did not explain the contents of the settlement agreement to her. He pointed out that the complainant did not make regular follow-ups regarding the settlement of the matter and that he would revert to the complainant at his earliest convenience. He indicated that he experienced difficulties in keeping track of all payments received by him and importantly he conceded that payment was made on 11 June 2015. He was of the view that the complaint was premature, and that the complainant suffers from a lack of trust. It is important to note that the pertinent aspects raised in the complaint was not addressed by the respondent.

10. The applicant’s committee recommended after considering the complaint that an inspection be conducted into the affairs of the respondent’s practise and accounting records. The respondent issued summons against the complainant for an amount of R1 000 000.00, alleging that the complainant defamed him by submitting a complaint with the applicant. The respondent then informed the applicant about the institution of the action and claimed that the matter was now sub-judice and in further correspondence he indicated that he was aware of the

applicant's instructions to Mr. Faris to conduct an inspection and requested the applicant to inform Mr Faris that the complaint has become sub-judice.

11. The applicant informed the respondent that it did not consider the action instituted against the complainant to be related to his accounting records and that the applicant required an inspection of the respondent's books of account and confirmed that the inspection would proceed. The respondent's response was to invite the applicant to bring an application to compel him to hand over his firm's accounting records for inspection. Despite the respondent's attitude, the applicant obtained certificates of balance in respect of his trust banking account and from a perusal of this it transpired that during the period 25 July 2015 to 25 April 2016 the available funds in the trust account declined to an amount of R22 011.47. This provides evidence of trust deficits at months during the period November 2015 to April 2016. The applicant pointed out that the firm's other trust creditors were not included in the calculation and that the trust deficit may be higher.

12. The respondent failed to address the merits of the complaint adequately and sufficiently. Despite the respondents claim that he accounted to the complainant, he failed to attach any proof to his answering affidavit. The respondent in his answering affidavit indicated that payment of R123 800.33 was made to the complainant on 13 October 2016, nearly 16 months after he received payment from the RAF. A total amount of R376 958.00 was paid into the respondent's trust account by the RAF in relation to the complainant's claim. In a letter to the

complainant dated 19 July 2016 he stated that the amount of R253 157.67 was kept by him as fees prior to taxation.

13. The application was launched in terms of section 22(1) (d) of the Attorneys Act¹ which has been repealed and replaced by the Legal Practice Act² which provided that an attorney may on application by the Law Society (now the Legal Practice Council) be struck or suspended if he in the discretion of the court is not a fit and proper person to continue practice as an attorney.

14. It is trite that the nature of this type of application is *sui generis*. In *Jasat v Natal Law Society*³ the threefold enquiry that a court must follow was set out. Firstly, the court must establish whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. The second enquiry is whether the person in the discretion of the court, is a fit and proper person to practice as a legal practitioner, this is a value judgment. Thirdly the court must decide whether the person should be struck from the roll of practitioners, or whether a suspension would suffice.⁴

15. The court's discretion must be exercised based on the facts before it, which must be considered in their totality and not in isolation⁵ The exercise of the court's discretion will be done taking into consideration the facts of a particular case.

¹ 53 of 1979.

² 28 of 2014.

³ 2000 (3) SA 44 (SCA) par. 10.

⁴ *Ibid* at para 10.

⁵ *Law Society Transvaal v Matthews* 1989 (4) SA 389 (T) at 393I-J.

“Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a court is bound to follow a precedent in the exercise of its discretion it would mean that the court has no real discretion.”⁶

16. It has long been established that a legal practitioner must scrupulously comply with the legislation applicable to legal practitioners and must exercise the highest degree of good faith. It is trite that an attorney is a member of a learned, respected and honourable profession and the courts have a duty to jealously protect the integrity of the legal profession.

17. The charges against the respondent are serious, the facts are clear and for the most part not really disputed. He received the money awarded to the complainant in his trust account and for reasons that remain unclear did not account to her or pay the money over to her. He made a belated payment to her of a much smaller amount, without properly accounting for the rest. His letter to her that it was for his fees is in stark conflict with what is allowed if there was a valid contingency fee agreement, as was initially alleged.

18. The deficit in his trust account constitutes a serious transgression. It is also problematic that he did not give his cooperation when the applicant requested an inspection of his trust account and books. The applicant has a duty towards the profession and the public to ensure that the trust account of practitioners is

⁶ Malan and Another v The Law Society, Northern Provinces [2009] 1ALL SA 133 (SCA) at para 9.

properly managed. The issue of a summons based on defamation against the complainant for laying a complaint against him with the body that is empowered by law to investigate inter alia complaints against practitioners, in the circumstances of this case, brings into question his bona fides especially if the timing of this summons is considered.

19. Legal Practitioners are often subjected to complaints by clients, sometimes these complaints are without any merit, but that is where the duty and role of the applicant comes in to investigate. The respondent however denied the applicant the opportunity to inspect his books and clear him from wrongdoing and raised the defence of sub-judice. This shows a rather concerning lack of appreciation for the duty of the applicant and his own duty towards his clients and the legal profession.
20. It was argued on his behalf that he is 64 years old and at the end of his career and the matter has now dragged on for almost eight years. That was however due to the matter proceeding to the Supreme Court of Appeal and being referred back to the high court and the delay cannot be used to justify or explain the respondent's conduct or lessen the seriousness of the various transgressions committed by him. Furthermore, a man of his age and experience should have known better.
21. It was furthermore argued on his behalf that there was only this one complaint against him in all his years of practice. It is not how many complaints are lodged, but the nature of the transgression and keeping in mind the high standard that

should be applied to legal practitioners. The respondent's failure to address the merits of the complaint against him adequately is indicative of a lack of insight in his duties and obligations as an attorney. The respondent's lack of appreciation of the duty of the applicant towards the profession becomes apparent in his unwillingness to give his cooperation when an inspection was requested. It also reflects on his suitability to practice as an attorney. In my view the respondent should be removed from roll of attorneys.

The following order is made:

1. The respondent is struck from the roll of legal practitioners.
2. The respondent immediately surrenders and delivers to the Registrar of this Honourable Court his certificate of enrolment as an attorney 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 certificate is, is authorised 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 account(s).

5. The Director or Acting Director of the Gauteng Provincial Council or any person nominated by him/ her, in his/ her capacity as such, is a suitable person to act as curator bonis (curator) to administer and control the trust account(s) 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 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 sections 86(1) and 86(2) of the Legal Practice Act ("LPA") and/or any separate savings or interest-bearing accounts as contemplated by sections 86(3) and 86(4) of the LPA, 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 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 Legal Practitioners' 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 interests 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 sections 86(3) and 86(4) of the LPA, 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 respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);
- 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) and to call upon the respondent to furnish him/her, within 30 (thirty) days of the date of service of this order or such further period as he/she 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/she may require to enable him/her, acting in consultation with, and subject to the requirements of the board of control of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of 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 any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;
- 5.6 Having determined the amounts which he/she considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;
- 5.7 In the event of there being any surplus in the trust account(s) of the respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 86(5) of the LPA 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, costs, 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 trustee(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 respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been

approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the 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/her in carrying out his/her duties as curator; and

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

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

6.2 any monies invested by the respondent in terms of 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 respondent;

6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the respondent, whether as executors or trustees or curators 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 terms 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 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;

6.9 the 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 respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

7. That should the respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon them 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, be empowered and directed

to search for and to take possession thereof wherever they may be and to deliver them to such curator.

8. That 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 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/she may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or the respondent's clients and/or fund in respect of money and/or other property entrusted to the 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 thereof in any newspaper he/she considers appropriate; and

8.4 wind-up of the respondent's practice.

9. That the respondent be and is hereby removed from office as –

9.1 Executor of any estate of which respondent have been appointed in terms of section 54(1)(a)(v) of the Administration of Estates 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 Estates 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(e) of the Companies 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 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act 69 of 1984;

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

10. That the respondent be and is hereby directed:

10.1 to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the respondent;

10.2 to pay the reasonable fees and expenses of the curator;

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

10.4 to pay the expenses relating to the publication of this order and/or abbreviated version thereof;

10.5 to pay the costs of this application on an attorney-and-client scale;

11. That, 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, 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 the respondent in respect of his former practice(s), 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. That a certificate issued by a director of the fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

R G TOLMAY
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

M BALOYI-MBEMBELE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For Applicant: Ms M Moolman
Instructed by Rooth and Wessels Attorneys

For Respondent: Adv F A Ras SC
Instructed by Sekgala and Njau Attorneys

Date of hearing: 10 August 2023

Date of Judgment: