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

Case Number: **2023-038247****DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED: NO
 DATE: 09 June 2023
 SIGNATURE: **JANSE VAN NIEUWENHUIZEN J**

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

PHETOGO GLADNESS LEMOGANG MOLATI
Respondent

First

MOLATI ATTORNEYS INCORPORATED

Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

[1] This is an urgent application, in terms of section 40(3)(a)(iv) and 44(1) of the Legal Practice Act, 28 of 2014 (“the Act”), for the name of the first respondent to be struck from the roll of legal practitioners and conveyancers *alternatively* that the first respondent be suspended from practice pending the removal of her name from the roll.

[2] The respondents oppose the relief claimed by the applicant.

Parties

[3] The applicant is the South African Legal Practice Council (“the LPC”), a legal entity established in terms of section 4 of the Act. In terms of the Rules promulgated under the Act and its predecessor, the LPC must *inter alia* promote and protect the public interest and must maintain the integrity and status of the legal profession.

[4] The first respondent is Phetogo Gladness Lemogang Molati, a legal practitioner duly admitted and enrolled as an attorney on 20 January 2017 and as a conveyancer on 2 March 2018.

[5] The second respondent is Molati Attorneys Incorporated, a company duly incorporated in terms of the laws of the Republic of South African, that conducts the business of a legal practice. The first respondent has been practicing from 2 November 2017 as a sole practitioner under the name and style of the second respondent.

[6] Prior to dealing with the merits of the application, it is prudent to have regard to the point in *limine* raised on behalf of the respondents.

Point in *limine*: Urgency / application premature

- [7] Mr Tshavhungwe, counsel for the respondents, submitted that the applicant has not complied with the provisions of section 43 of the Act, which section provides for urgent legal proceedings.
- [8] Section 43 falls under Chapter 4 that makes provision for Professional Conduct and Establishment of Disciplinary Bodies. In order to place the respondents' objection in context, it is apposite to mention that section 38 provides for the procedure when dealing with complaints of misconduct and the procedure to be followed in disciplinary hearings. Section 39 pertains to the disciplinary hearing and section 40 provides for the proceedings after the disciplinary hearing and the imposition of sanctions.
- [9] Section 41 and 42 is not relevant for present purposes. Section 43 reads as follows:
- “43. Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.”*

[10] In *casu* the provisions of section 38, 39 and 40 has not been complied with and a disciplinary body has not satisfied itself that urgent proceedings should be instituted.

[11] The LPC could, therefore, not institute the present urgent proceedings.

[12] In advancing the aforesaid submission, the respondents have failed to have regard to section 44(1) of the Act that provides for the powers of this court. Section 44(1) reads as follows:

*“44(1) The provisions of this Act **do not derogate in any manner** from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.”*

[13] The rationale behind the provisions of section 44(1) is manifestly clear. It is the High Court that admit legal practitioners once the court is satisfied that a candidate is a fit and proper person to enter the profession. [See: Section 24(2)(c)] Once so admitted, legal practitioners are officers of the High Court and the highest degree of honesty and professionalism is expected of them.

[14] The court will fail dismally in both its constitutional duty and its duty to the public if it, when faced with serious allegations of misconduct committed by an officer of court, turns a blind eye and refuses to entertain the matter.

[15] The point in *limine* is ill-conceived and dismissed.

Mertis

[16] The applicant has received no less than 15 complaints from clients or erstwhile clients of the first respondent. The first respondent has, furthermore, contravened the Act and Rules as set out in more detail *infra*.

[17] I propose to deal herein with the more serious allegations of misconduct committed by the first respondent.

Fidelity Fund Certificate

[18] Rule 54.24 of the LPC Rules require every legal practitioner to ensure that its auditors lodge the firm's audit report within 6 months of the annual closing of its accounts.

[19] In compliance with the rule and on 13 January 2023 the first respondent duly submitted the firm's audit report. The audit report was, however, qualified on the basis that the firm's trust account was not maintained in compliance with the Act and the Rules.

[20] The lodging of an unqualified auditor report is, in terms of Rule 54.29, a prerequisite for the issuing of a Fidelity Fund Certificate. In the result, the first respondent is presently practising without a Fidelity Fund Certificate.

[21] Section 84(1) of the Act provides that a legal practitioner that practices for his or her own account must be in possession of a Fidelity Fund Certificate. In terms of the provisions of section 93(8)(a) any person who contravenes section 84(1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

[22] In view of the qualified audit report, Ms Estelle Veldsman, manager: Risk and Compliance in the employee of the LPC send an email to the first respondent on 18 January 2023 and requested the first respondent to submit the firm's:

22.1 Trust creditors ledger for the period 1 March 2021 to 31 December 2022;

22.2 Trust creditor listing as at 28 February 2022.

[23] Although the first respondent complied with the request on 8 February 2023, she did not take any further steps to ensure that a Fidelity Fund Certificate is issued to the firm.

[24] At present the first respondent is practicing without a Fidelity Fund Certificate in contravention of section 84(1) and makes herself guilty of criminal conduct as envisaged in section 93(8)(c).

[25] The first respondent's conduct, exposes the public and the LPC to immense risk.

[26] In response to the aforesaid, the first respondent states that Ashwin Reddy on behalf of the LPC, attended at her offices on 28 June 2022 to attend to the qualified report. According to the first respondent the qualification is in respect of one transaction that occurred on the trust account due to an oversight.

[27] This averment is not correct. As set out *supra*, the firm's auditors qualified the audit report because the firm's trust account was not maintained.

[28] The report by Ashwin Reddy does also not confirm the first respondent's version. To the contrary, the first respondent steadfastly refused to cooperate with Ashwin Reddy as will appear more fully *infra*.

Complaint: Ms Ross and report by Ashwin Reddy

[29] Ms Ross stated that she and her business partner, Mr Terrence Maseko, instructed the first respondent to attend to the transfer of an immovable property. The purchase price of R 720 000, 00 and an amount of R 26 797, 95 in respect of conveyancing fees were paid into the firm's trust bank account on 18 March 2021.

[30] On 1 February 2022 when the complaint was submitted, the transfer had still not been registered and Ms Ross, despite various endeavours, had not received any feedback regarding the progress of the matter.

[31] Ashwin Reddy ("Reddy"), a chartered accountant was appointed by the LPC to investigate the complaint and he met with the first respondent at her offices on 28 June 2022. The first respondent was informed of the reason for the inspection of her accounting records and the procedure that will be followed was explained to her.

[32] On 1 July 2022 Reddy requested the first respondent to furnish the firms accounting records to him by 15 July 2022. The first respondent did not comply with the request. A further request was made on 1 August 2022 for the accounting records to be submitted by 15 August 2022.

[33] Once again, the first respondent failed to comply with the request. Reddy contacted the first respondent on 15 August 2022 to establish the reason for

the first respondent's failure to cooperate. The first respondent informed Reddy that the complaint had been withdrawn and that she does not see any reason for the inspection to proceed.

[34] Reddy informed the first respondent that the inspection must still proceed and reiterated his request for the firm's accounting records. The first respondent failed to cooperate. Reddy proceeded to obtain the firm's trust bank account statements directly from First National Bank in terms of Section 91(4) of the Act.

[35] Reddy stated that the first respondent's refusal to submit the firm's accounting records materially hampered the scope of the inspection.

[36] The trust bank statements of the firm confirmed receipt of an amount of R 720 000, 00 on 18 March 2021 and the amount of R 26 797, 95 on 19 March 2021.

[37] The statements further revealed that the credit balance prior to receipt of the amounts *supra* was R 0, 28. Subsequent to receipt of the deposits, the first respondent made certain payments to third parties and also transferred an amount of R 624 761, 00 to the firm's business account. As a result, and on 15 April 2021, the firm's trust bank account reflected a credit balance of R 250, 97.

[38] Reddy indicated that the payments were in contravention of Rule 54.14.14, which Rule provides that withdrawals from a firm's trust bank account shall only be made in respect of payments to or for a trust creditor or alternatively as a transfer to the firm's business banking account in respect of monies due to the firm.

- [39] The aforesaid conduct clearly amounts to the misappropriation of trust money and the trust account had a trust deficit on 15 April 2021 of R 746 546, 98.
- [40] From a Deeds search Reddy established that the immovable property was registered in the names of Ms Ross and Mr Maseko on 28 July 2022. Reddy was, however, not able to establish whether the purchase amount was paid to the seller, being the Estate Late Trevor Mushi Tlhabane.
- [41] The first respondent reacted to the Reddy report by stating that she made only one mistake on the trust bank account after receipt of the Ross money. She accidentally paid an amount of R 10 000, 00 to IT Kleenex from the trust account instead of the business account.
- [42] The first respondent does not deal with the other payments at all and fails dismally to explain the trust deficit on 15 April 2021.

Contempt of court

- [43] From 7 to 12th January 2020 the first respondent removed property and cash belonging to two companies from their possession without a court order. The companies brought an application for the return of their property and cash. On 15 January 2020 the court ordered the respondent to return the property and cash to the companies and directed that the matter be brought to the attention of the LPC.
- [44] The first respondent blatantly refused to comply with the court order which necessitated a further application and order by Louw J on 28 January 2020 authorising the Sheriff with the assistance of the Police to take possession of the property wherever it may be found.

- [45] The first respondent stated that she is not willing to place a version before court because the companies have instituted action against her and anything she say may be used against her.
- [46] The first respondent, as an officer of this court, should have taken the court into her confidence and should have provided a full explanation for her conduct. Contempt of a court order, more especially by a legal practitioner, is a most serious transgression.
- [47] Any civil action instituted against the first respondent does not excuse her from her duty towards the court.

Conclusion

- [48] In view of the first respondent's conduct set out *supra*, I deem it prudent to, at this stage, grant an order suspending the first respondent from practice pending the hearing of the application for the removal of her from the roll of attorneys and conveyancers.
- [49] The remainder of the complaints are best left for determination at such hearing.

Costs

- [50] There is no reason why the normal cost order in matters brought by the LPC should not follow.

ORDER

I grant an order in terms of the draft order attached hereto and marked "X".

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

06 June 2023

DATE DELIVERED:

09 June 2023

APPEARANCES

For the Applicant: Advocate Moolman

Instructed by: Damons Magardie Richardson Attorneys

For the Respondents: Mr Tshavhungwe

Instructed by: Mojapelo Attorneys