

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE 19239/2022

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **Yes**

**4 June 2024** .....

DATE

SIGNATURE

IN THE MATTER BETWEEN:

LIZE MAARTENS

APPLICANT

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

RESPONDENT

Heard 16 April 2024

Delivered 4 June 2024

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JUDGMENT

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## **MATTHYS AJ (MOOKI J concurring)**

### **INTRODUCTION**

[1] This is an opposed application by the applicant for her re-admission as a legal practitioner and enrolment as an Attorney. The applicant was initially admitted as an Attorney on 30 June 1998, in terms of section 15 of the repealed Attorneys Act<sup>1</sup>. Her name was struck off the roll of Attorneys on 1 March 2005<sup>2</sup>. The striking order was made in her absence and included ancillary relief prayed for by the Law Society<sup>3</sup> at the time. The record does not include the reasons for the order of 1 March 2005. It is unclear whether the court gave reasons or only made the order.

[2] The applicant avers that she never received the notice of set down for 1 March 2005. She established during 2006, that the notice of set down and heads of argument for 1 March 2005 were served on Attorneys who were not her Attorneys of record.<sup>4</sup> The applicant never challenged the order striking her name from the roll of Attorneys. I accept that the final striking order was granted based on the case put forward by the Law Society<sup>5</sup>.

[3] The applicant contends that she is now rehabilitated and is a “fit and proper person” for admission as a legal practitioner. The South African Legal Practice Council (LPC) however opposes the application, contending that the applicant is not reformed.

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<sup>1</sup> Act 53/1979

<sup>2</sup> C Botha J and R D Claasen J granted the striking order.

<sup>3</sup> Law Society of the Northern Provinces Incorporated as the Law Society of the Transvaal

<sup>4</sup> Messrs. Hahn & Hahn

<sup>5</sup> It should be noted that the papers founding the 2005 striking application by the then Law Society, are incorporated in the applicant's founding affidavit in this re-admission application.

## **BACKGROUND**

[4] Following an interim order suspending the applicant on 13 September 2002, the Law Society constituted a disciplinary committee, which dealt with several complaints against the applicant. The applicant participated in the disciplinary hearing. The disciplinary committee provided written reasons for its findings<sup>6</sup>. In summary, the committee found the applicant guilty on the following transgressions-

- a. Failure to keep proper accounting records; Insufficient funds in the trust account to meet creditors obligations; Drawing cash trust cheques payable to bearer;
- b. Complaints by clients -two complaints by client (Mr Prout-Jones) related to failure to keep proper accounting records, misappropriation of trust funds; failure to give proper attention to client affairs/instructions; Complaint by Mr Visser related to the credit of money received from client into her business account and not the trust account; Complaint by Ms Sello related to failure to account to client; Complaint by Mr Budrudin related to failure to deposit R5000 in her trust account for future legal services to client;
- c. Unprofessional, dishonourable and unworthy conduct, related to sharing an office with a person who is not a legal practitioner and sharing of fees with a non-professional.

[5] Generally, the committee found, that there was no evidence of misappropriation of trust money by the applicant, in the sense of theft that resulted in client losses. The committee held that the misconduct amounted to technical violations of the regulatory framework on the handling of trust funds.

[6] The committee further concluded that the applicant was evasive regarding her guilt and that she would rather blame other people, including her auditors. She was found to have

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<sup>6</sup> The disciplinary committee's written reasons for its findings are incorporated in the applicant's founding affidavit for purposes of this re-admission application.

been untruthful during the hearing. The committee ultimately concluded that her conduct warranted removal of her name from the roll.

### **RE-ADMISSION AS A LEGAL PRACTITIONER**

[7] The Legal Practice Act<sup>7</sup> (LPA) does not specifically provide for the re-admission of legal practitioners previously struck off the roll. Section 24 (2) of the LPA, provides that the High Court must admit to practice and authorise to be enrolled as a legal practitioner, any person who, upon application, satisfies the court that he or she is a fit and proper person to be so admitted. The same criterion applies to an application for re-admission. More is required, however, with re-admission as a legal practitioner. That is because the Court is dealing with a person, who, having sworn to comport as required of an officer of the court was found to have fallen short, of upholding ethical standards<sup>8</sup>.

[8] An applicant for re-admission must show that there has been a genuine, complete and permanent reformation of the defect that led to removal from the roll. The defect that led to removal must be shown to no longer exist and it must be shown, that the applicant can be trusted to be a person with integrity, worthy to be a member of the profession.

[9] In the determination as to whether the onus that rest on the applicant has been discharged, the court is required to scrutinise her conduct that led to the striking order, together with her conduct subsequent thereto<sup>9</sup>.

<sup>7</sup> Act 28/2014

<sup>8</sup> Law Society, Transvaal v Behrman 1981 (4) SA 538 (A) at 540E-G; Swartzberg v Law Society of Northern Provinces [2008] ZASCA 36; [2008] 3 All SA 438(SCA); 2008(5) SA 322 (SCA) at para [18]

<sup>9</sup> Johannesburg Society of Advocates and Another v Nthai and Others 2021 (2) SA 343 (SCA) ; Kudo v Cape Law Society 1972 (4) SA 342 (C) at 345H-346A

## DISCUSSION AND FINDINGS

[10] It has been some 19 years since the applicant's name was struck from the roll. This period alone, does not merit re-enrolment as a legal practitioner. She must satisfy the court in the various respects as mentioned above.

[11] In her lengthy founding affidavit, the applicant *inter alia* sets out her life history and her contestation of the guilty findings made by the disciplinary committee, established by the then Law Society<sup>10</sup>. It is not in issue that the applicant was raised in an impoverished household and experienced emotional abuse by her parents since childhood<sup>11</sup>. Her life goal has always been, to escape her parent's abuse and their poverty, by qualifying herself for a profession. After she matriculated, she obtained the B.luris and LLB degrees. She completed articles and was admitted as an Attorney in 1998.

[12] In 2001, she married her deceased husband and fell pregnant with her daughter, now about 19 years old. The applicant admits that she presented conflicting versions to the court, regarding the circumstances surrounding her husband's death in 2002. In her answering affidavit for purposes of the striking application, she stated that her husband died of unknown causes.

[13] However, now in her founding affidavit, she states that her husband was shot and killed in their home in her presence and that she herself was seriously injured during this incident. That there are material discrepancies in the two versions is patent.

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<sup>10</sup> The founding affidavit comprises 136 pages with 273 paragraphs

<sup>11</sup> Both her parents, were alcoholics

[14] Applicant's reason advanced for the conflicting versions in the two affidavits, is to the extent that during 2003, (when she deposed to the answering affidavit) she simply could not face the trauma and shock of reliving the events of her husband's death. Further, that the circumstances of her husband's death, left her depressed and despondent. She received psychiatric treatment and was prescribed strong anti-depressants and tranquilizers.

[15] It is applicant's contention that she was unable to attend to her clients affairs with the requisite care and professionalism, because of her depressed psychological condition. No supporting evidence is forthcoming regarding the alleged depression suffered and the treatment received. In spite of the explanation provided for the different versions surrounding her husband's death, the applicant still preferred to provide, scant information in that regard. The information now offered by the applicant, no doubt leaves much room for speculation.

[16] I am "at pains" to comprehend, why it is that the applicant does not make full and complete disclosure of the material facts relevant to the one event (her husband's death) that traumatised her so much, that it negatively impacted on her occupational functioning. The applicant chooses to present the evidence in this regard equivocally and she does not take this court in her full confidence. Her failure to do so proves a lack of candour.

[17] I considered that the applicant states in her founding affidavit, that the LPC helpfully provided her with the guidelines it uses, when considering re-admission applications. Having been provided with the said guidelines, I find that the manner in which the applicant presents her case, does not demonstrate that she understands the nature and purpose of this type of application.

[18] In her affidavit, she goes on a tangent criticising and accusing the LPC of *mala fides* for bringing the erstwhile urgent application for her suspension, prior to a disciplinary hearing held. She also re-argues the merits of the various charges founding the striking order, as if on appeal or grievance procedure. Generally, the applicant still disputes the merits of the charges she was found guilty of and she typifies those charges she pleaded guilty to, as minor errors, which did not justify her suspension or striking.

[19] In the same vein, the applicant only identifies and acknowledge her lack of accounting skills, as a shortcoming to be remedied. Her lack of accounting skill cannot typically be considered a character defect<sup>12</sup>. It is a skill or knowledge deficit in technical expertise, to be addressed through education and experience. The lack of accounting skill is not a moral or ethical failing.

[20] Applicant has successfully completed the prescribed Practice Management Training Course and she professes that she now understands the bookkeeping principles for Attorneys. However, her belligerent conduct and attitude to the earlier enquiry into her offending conduct, which attitude subsists with this application, proves a lack of insight

<sup>12</sup> Character defects refers to personality traits or behavioural patterns that are harmful, unethical, or unprofessional eg. dishonesty, irresponsibility, or untrustworthiness.

and appreciation for the serious nature of the charges and findings made against her. The unchallenged findings by the disciplinary committee, which founded the striking order of 1 March 2005, is that her-

*“attempts at evading an adverse finding in respect of the charges and complaints against her, to the extent of being untruthful, even perhaps more so, than the actual transgressions relating to insufficient accounting records, amount in the view of the disciplinary committee to gross unprofessional, dishonorable and unworthy conduct on the part of an Attorney...”* [My emphasis]

[21] The applicant was found to have been untruthful, in the conduct of her defence against the indictment by the Law Society. In this application, her case falls short, for her failing to identify and acknowledge untruthfulness or dishonesty, as her character flaw.<sup>13</sup> I find that she does not accept and understand the real reasons for her name being struck from the roll. It is no surprise that the applicant still refuses to take full responsibility for the conduct that led to her name being struck from the roll.

[22] A matter of further concern in the case presented by the applicant is the ambiguous terms in which she claims Mr Prout-Jones<sup>14</sup>, now supports her re-admission application. The evidence presented by the applicant in a letter dated 5 June 2021, proves that she drafted Mr Prout-Jones’s affidavit dated 22 June 2021 and that she forwarded the affidavit to him for signature. In my considered view, the fact that applicant drafted the

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<sup>13</sup> Swartzberg v Law Society, Northern Provinces 2008 (5) SA 322 SCA para 22

<sup>14</sup> Former client who levelled a complaint with the Law Society



contents of the affidavit herself, detracts from the deponent's independence concerning the contents thereof.

[23] Furthermore, these facts prove bad judgment on the part of the applicant, since she drafted the affidavit of Mr Prout-Jones, despite having a personal interest in the matter for which the affidavit was made.

[24] The applicant further avers that Mr Prout-Jones committed perjury when he testified against her during the disciplinary hearing. She however now contends that he accepted her offer to provide future legal services to him, on a pro bono basis, in order to satisfy the perceived harm he had suffered. This offer made by the applicant is to my mind unacceptable, in that it denotes a lack of integrity on her part. I reason that if it is to be accepted that Mr Prout-Jones committed perjury against her, she should not be willing to compromise her stance, only because he is willing to assist her, in support of this application. The applicant has not shown that she is a fit and proper person for re-admission as a legal practitioner.

[25] The following order is made:

(a) The application is dismissed.

(b) The applicant is ordered to pay the costs of the application, on a party and party scale.

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**MATTHYS AJ**  
**JUDGE (ACTING) OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**I agree and it is so ordered**

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**MOOKI J**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Appearance:

On behalf of the Applicant: Adv A A Basson

On behalf of the Respondent: Damons Magardie Richardson Attorneys