KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

REPORTABLE

Case no: 1526/2010

In the matter between:

KWAZULU-NATAL LAW SOCIETY APPLICANT

and

VERONICA SINGH RESPONDENT

JUDGMENT

MADONDO J

[1] The applicant seeks an order in terms of section 22(1)(d) of the Attorneys Act No.53 of 1979 (the Act) striking the name of the respondent from the roll of the attorneys on the ground that by reason of her criminal conviction on the charges of fraud she is not a fit and proper person to continue practising as an attorney. The applicant contends that the respondent by being placed on the roll of attorneys she is held out to the public as being worth of their trust. This application arises from the confirmation of her convictions on four counts of fraud by the Supreme Court of Appeal on 30 November 2009. However, it is common cause between the parties that at the time of the commission of the crimes of fraud complained of and the conviction thereof the respondent was a non practising, attorney, employed as a public prosecutrix at the Magistrate's Court.

[2] The applicant is the KwaZulu-Natal Law Society, a juristic person established in terms of the Act and it brings this application in its capacity as both the statutory *custos morum* of the legal profession practising at the side bar, and the protection of the public in their dealings with the profession. See *Law Society of the Cape of Good Hope v Holmes 2006(2) SA 139 (C) 145*.

[3] The respondent is Veronica Singh, a major female attorney, admitted and enrolled to practise as such, who is presently practising at KwaDukuza, KwaZulu-Natal, under the name and style of Veronica Singh and Associates.

Issue

[4] The question for decision is whether by reason of her criminal convictions the respondent is a fit and proper person to continue practising as an attorney, and, secondly, whether her misconduct should be visited with an order striking her off the roll.

Factual Background

[5] The respondent was on 1 December 2000 convicted in the Pinetown Magistrate's Court on eight (8) counts of fraud and she was sentenced to three (3) years' imprisonment on four of them (counts 3, 4, 6 and 8) taken together as one for the purpose of the sentence. On the other (counts 9, 10, 11 and 13), also taken together for the purpose of sentence, she was sentenced to three (3) year's imprisonment of which two were suspended for five years on condition that she was not convicted of an offence of which dishonesty is an element, committed during the period of suspension.

[6] The respondent then appealed against convictions and sentences to the Natal Provincial

Division of the High Court. The appeal was heard on 5 March 2002, and she was successful in having her conviction on four of those counts reversed (counts 3, 9, 10 and 11). However, her conviction on counts 4, 6, 8, and 13 was confirmed. But, the Court set aside the sentence imposed in respect of such counts and in its stead it imposed a sentence of three (3) years' imprisonment, which was wholly suspended on condition that she was not convicted of an offence of which dishonesty was an element, committed during the period of suspension.

[7] With the leave of the High Court the respondent appealed against her conviction on the remaining four counts (counts 4, 6, 8, and 13) to the Supreme Court of Appeal. On assessing the evidence by each individual complainant the Supreme Court of Appeal concluded that the State had succeeded in proving the guilt of the respondent beyond reasonable doubt and that she was correctly convicted in the Magistrate's Court. The Court went on to express the view that it was also clear that even in respect of the counts where her appeal was successful in the High Court, she had a practise of receiving monies from the members of the public. In the result the respondent's appeal was dismissed on 30 November 2009.

[8] At the Magistrate's Court the respondent was facing thirteen (13) Counts of fraud, alternatively theft. All the charges were related to the receipt of certain amounts of money by the respondent from various traffic offenders. The State alleged that during the period May to August 1999, the respondent wrongfully, unlawfully and falsely and with intent to defraud, gave out and pretended to various complainants that she would pay their fines in respect of traffic summonses and that by means of false pretences she induced the aforesaid persons to give her amounts of money, totaling R1250, to their loss or to the loss of the State whilst she

knew at the time that she was not entitled to accept such monies and that she was not going to pay it over to the State.

[9] The respondent pleaded not guilty to all counts. The State called various complainants as witnesses who testified that the respondent defrauded them of certain amounts of money. At the close of the trial proceedings the Learned Magistrate accepted the evidence of the State as true and correct, rejected the version of the respondent as false beyond reasonable doubt and found her guilty of eight (8) counts of fraud.

A Fit and Proper Person

[10] The respondent has exhausted her appeal remedies and she stands convicted of crimes involving dishonesty. The contention of the applicant is that while the criminal convictions stand, she is not a fit and proper person to continue practising as an attorney.

[11] Section 22(1) (d) of the Act provides:

> "any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practise by the court within the jurisdiction of which he practises… if he, in the discretion of the court, is not a fit and proper person to continue to practise as an attorney."

[12] With regard to the meaning of the words "a fit and proper person" in re *Chikweche 1995 (4) SA 284(25) at 291H-J*, **Gubbay CJ** said the following:

> "Construed in context, the words "a fit and proper person" allude, in my view, to the personal qualities of an applicant – that he is a person of honesty and reliability. See S v Mkhise; S v Mosia; S v Jones; S v Le Roux 1988(2) SA 868 (A) at 875d."

[13] Such personal qualities, in my view, also include the integrity of the applicant concerned. The Shorter Oxford English Dictionary defines the word "integrity" as "sinlessness … soundness of moral principle; the character of uncorrupted virtue; uprightness; honesty, sincerity.

[14] The profession of an attorney is an honourable one and as such demands complete honest, reliability and integrity from its members. See *Vassen v Law Society of the Cape of Good Hope 1998(4)SA 532 (SCA).*

[15] As **Corbett J** pointed out in *Law Society, Transvaal v Behrman 1981(4) SA 538 (AD) at 551 E-F*:

> "clearly the Law Society has an interest to ensure that persons who are admitted, or re-admitted, and enrolled as attorneys and who by practising become members of the Law Society are fit and proper persons to be so admitted or re-admitted. The interest comprehends not only the relationship which is created between a member and Society but also the duties and responsibilities which the Law Society assumes in regard to members to the Court and to the general public."

[16] The conduct the respondent committed bears a rational connection with the object of maintaining the integrity and honour of the profession. Undoubtedly, her dishonesty reflects upon her integrity and character, and it is also relevant for her fitness to be a member of a profession, demanding high standards of integrity from its members.

[17] In terms of section 22(1)(d) of the Act this Court has discretionary power to strike an attorney off the roll or suspend such attorney from practise on the ground that he or she is not a fit and proper person to continue practising as an attorney. As it was said in *Jasat v Natal Law*

Society 2000(3) SA 44 (SCA) at 51 C-G and repeated in *Malan and another v Law Society, Northern Provinces 2009 (1)SA 216 (SCA) paragraph 4,* the section contemplates that the Court must exercise these discretionary powers by way of a three-stage inquiry: First the Court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry; second, whether the person concerned in its discretion is a fit and proper person to continue practising as an attorney; and, thirdly whether in all circumstances the person concerned should be struck off the roll of attorneys or whether an order suspending him from practise for a specific period will suffice. See also *Holmes v Law Society of the Cape of Good Hope and another (Law Society of the Cape of Good Hope v Homes) 2006(2) SA 139(C).*

[18] The first question to decide is whether the respondent's offending conduct has been established on a preponderance of probabilities. It is an established rule of practise that the criminal conviction is *prima facie* proof that an attorney committed that offence, and provided that the offence is of a sufficiently serious nature, it is treated as *prima facie* proof that he or she is unfit to be on the roll of attorneys, the onus being on the attorney to either show that he or she was wrongly convicted or to advance circumstances which would justify his or her remaining on the roll despite conviction. See *Ngwenya v Society of Advocates, Pretoria, 2006(2) SA 88 (WLD) 90J-91A; Hassim (also known as Essack) v Incorporated Society of Natal 1977(2) SA 757(A) at 768A-B; Incorporated Law Society, Transvaal v Mandela 1954(3) SA 102 (T) 104A.*

[19] In *exparte Krause 1905 TS 221 at 223,* the principle to be applied in this regard was stated by **Innes CJ** as follows:

> "The real reason is this – that in most cases the fact of the criminal conviction shows the man to be of such a character that he is not worthy to be admitted to the ranks of an honourable profession. That is the real ground upon which the Court acts in such cases…"

[20] In *casu,* the respondent concedes the convictions and she does not dispute the seriousness of the crimes of which she was convicted. She also accepts the decision of the Supreme Court of Appeal dismissing her appeal against both conviction and sentence on four counts of fraud. In addition, she accepts the finding by the Supreme Court of Appeal that she did receive monies in question.

[21] Further, the respondent concedes that a conviction of fraud carries with it the *prima facie* taint of dishonesty. Notwithstanding the conviction the respondent contends that she is a fit and proper person to continue practising as an attorney. She alleges that when she committed these crimes, during the period May to August 1999, she was heavily pregnant and suffering from a diabetic pregnancy which caused her great emotional and psychological strain.

[22] Also, it has been argued on behalf of the respondent that at the time of the commission of the crimes in respect of which she was convicted, she was a non practising attorney. It is common cause between the parties that the respondent was admitted and enrolled to practise as an attorney of this Court on 23 January 1996. Shortly, after her admission she was appointed as a public prosecutrix at Verulam Magistrate's Court. She was later transferred to Pinetown Magistrate's Court. During 1999 she successfully applied for a position of a Magistrate. After completing the Magistrate's course at Justice College in Pretoria she took an appointment as an aspirant Magistrate at Queenstown Magistrate's Court, Eastern Cape.

[23] Also, it is common cause that the respondent has been convicted of an offence involving dishonesty, which conduct is in compatible with that expected of a person who is a fit and proper person to practise as an attorney of this Court. The contention of the applicant is that it has now been established as a fact that the respondent abused the position of trust which she occupied as an officer of the Court when defrauding persons for her own benefit and gain.

[24] Though it is true that in the present case we are not directly concerned with the misconduct of an attorney in her professional capacity, the weight of decided authorities does not make such a distinction when punishing an errant attorney.

[25] In the present case it is common cause that the offence the respondent committed has nothing to do with her practise as an attorney. It is clear however that the Court will in a proper case remove an attorney from the roll where he or she has been convicted of a crime which was not committed in his or her professional capacity. See *Incorporated Law Society v Transvaal case (supra) at 107 C-D.* The offence convicted need not be related to actual practising of the profession.

[26] In this regard **Wessels CJ** (as he then was) in *Solomon v Law Society of the Cape of Good Hope (supra) at 412 said:*

> "The practise … has been to treat the conviction of an attorney for a criminal offence, whether in his capacity as an attorney or not, as *prima facie* unfit to be on the roll of attorney."

[27] In *Re Hill; LR (1868) 3Q.B 543* **Cockburn CJ** said:

> "When an attorney does that which involves dishonesty, it is in the best interest of the suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as an attorney of the Court."

[28] This brings me to the second question whether the respondent is a fit and proper person to continue practising as an attorney. It has been argued on behalf of the applicant that taking into account the cumulative effect of all the convictions and the nature and seriousness of her misconduct, the respondent falls short of the standard required of an attorney, and that she is therefore not a fit and proper person to practise as such.

[29] In this regard the question this Court has to decide is whether the facts which have been put before us and on which the respondent was convicted show her to be of such character that she is not worthy to remain in the ranks of an honourable profession. See *Incorporated Law Society, Transvaal case (supra) at 108C.* The respondent in the present case concedes the convictions complained of and the seriousness thereof and she states that at the time she was suffering from a diabetic pregnancy which caused her enormous psychological and emotional strain. She rather puts it obliquely that, such a condition contributed to her succumb to the temptation.

[30] The mere fact of conviction for an offence, without any regard to its nature and the degree of moral obliquity in the offender which its commission reflects, will not suffice to indicate, even *prima facie,* that the offender is unfit to be an attorney. See *Incorporated Law Society, Transvaal case (supra) at pp.104, 105.* For a legal practitioner to be said to be unfit to be on the roll, the misconduct complained of must be of a serious nature to an extent that it manifests character defect and lack of integrity. See *Incorporated Law Society, Natal v Roux*

1972(3)SA 145(N) at 150 B-C **De Linder J.**

[31] The inquiry whether the person concerned in the decision of the court is not a fit and proper person to continue to practise as an attorney involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent this entails a value judgment. See *Jasat case (supra) at p51*. The nature of the conduct maybe such that it establishes that the person is not fit and proper to continue to practise as an attorney. See *Malan's case (supra) at 219.*

[32] It is wholly impracticable to determine *expost facto* whether the respondent is a fit and proper person "to remain" on the roll of attorneys. See *Prince v President; Cape Law Society and others 2000(3) 848 (SCA) 857.* It is common cause that the respondent has for the past eight (8) years been practising for her own account without any blemish. Her trust account is administered in a strict and proper manner, and monies collected on behalf of her clients are accounted promptly. There has been no query or complaint whatsoever to the applicant about any funds given to the respondent in trust. Also, it is her contention that for the past eight (8) years she has been entrusted with large sums of clients monies, often in excess of R1 million for a single property transaction.

[33] It is common cause also that the respondent has duly paid over and accounted for all monies entrusted with her. No allegation has been made that her books are not properly kept and that there have been or are any irregularities in her trust or that she has misappropriated any trust monies. Her books have been audited without qualification and in such every year not

an irregularity has been found. No complaint has ever been made that she has not been faithfully and diligently attending to the affairs of her clients. However, regard being had to the nature of the conduct of the respondent her conduct was unprofessional. When the respondent defrauded the traffic offenders she was holding a position of trust as officer of the Court.

[34] The attorney's profession is an honourable profession, which demands complete honesty and integrity from its members. Undoubtedly, her dishonesty reflects badly upon her integrity and character.

[35] Although the present matter concerns a serious criminal conviction involving dishonest, but it does not involve any element of lack of integrity or defective character. In the last eight (8) years of practise for her own account the respondent has proved to the satisfaction of this Court that a particular defect which manifested itself in 1999, has ceased to play a role in her life and that there has been a complete reformation in this regard.

[36] In the premises, it is impossible to say that the respondent's conduct manifests a character defect that warrants the conclusion that she is not a fit and proper person to remain on the roll of attorney. The circumstances of this case are exceptional in that the commission of fraud was not the result of a character defect inherent in the respondent, but rather of a moral lapse brought about the pressure she had been subjected to during diabetic pregnancy. By her conduct subsequent to criminal conviction, seen in its totality, the respondent in my judgment has sufficiently demonstrated that she is a fit and proper person to continue to practise as an

attorney.

[37] Although all this is to the credit of the respondent, but it cannot be permitted to deflect the Court from its duty which is to signify its strong disapproval and censure of the respondent's conduct by making an order which will not leave in doubt the serious view the Court takes of conduct of that kind in an attorney. See *Incorporated Law Society, Natal case (supra) at page 151.*

Appropriate Sanction

[38] This brings me to an inquiry, namely, whether the appellant should be removed from the roll of attorneys or whether an order suspending her from practise would be an appropriate sanction. See also *Vassen case (supra) at 587E.* In *Jasat case (supra) at 51H-I* **Scott JA** said:

> "Whether a court will adopt the one course or the other will depend upon such factors as the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of an honourable profession (Incorporated Law Society, Transvsaal v Mandela 1954(3) SA 102(T) at 108D-E), the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately it is a question of degree." See also *Malan's case (supra) at page 219 H per Harms ADP*.

[39] The respondent has been convicted of an offence involving dishonesty which is incompatible with integrity, honesty, and reliability required by the attorney's profession. However, the fact that the respondent has committed a misconduct involving dishonesty does not necessarily mean that the striking off should follow as a matter of course. The removal of the legal practitioner from the roll on the basis of criminal sentence is entirely dependent on the facts of each particular case.

[40] **Miller J** in *Incorporated Law Society, Natal case (supra) at page 149* said:

> "But it goes without saying that offences which fall within the genus of crimes to which fraud belongs are prima facie indicative of unfitness to be on the roll of attorneys and there are many cases, extending over the past sixty years, in which attorneys have been removed from the roll because of convictions for theft or the like."

[41] For an attorney to be struck off the roll his or her misdemeanor must show dishonesty, a defect of character, and in these cases "reformation of character" is the *factum probandum*. See *Behman v Law Society, Transvaal 1980(4) SA 4 (TPD) 9A.*

[42] The Court has a duty to determine what the particular defect of character or attitude was before one can begin to establish whether an applicant has reformed in respect thereof. It must also inquire whether the respondent herself properly and correctly identifies and appreciates the defect of character or attitude involved. See *Exparte Aarons (Law Society Transvaal Intervening) 1985(3) SA 286(T) 294 G-H).*

[43] Although the respondent's submission to temptation meant that she was at the time not a fit and proper person to be on the roll of attorneys, it does not necessarily mean that she has to be struck from the roll, suspension may be an option. It appears to me that her conduct was a moral lapse which will not necessarily recur. The evidence does not show that her character is so inherently flawed that she will necessarily continue to succumb if she remains in practise.

[44] The conduct of the respondent of taking the money from the accused persons

appearing in the traffic Court as payment towards fines imposed against them under the pretext that she would pay it over to the State and of misappropriating such monies to herself, is not in dispute. But the Court must determine whether the respondent can be trusted in future to carry out her professional duties honestly and in a satisfactory manner. See *Law Society, Transvaal case (supra) at 558F.* If a court finds dishonesty the circumstances must be exceptional before a court will order a suspension instead of a removal. See *Malan's case(supra) at 221.*

[45] Undoubtedly, the respondent's dishonesty reflects upon her integrity and character. The question for decision is whether it does so to an extent which justifies removing her from the roll of attorneys. Indeed, this Court must enquire whether in all the circumstances of this case the respondent is to be removed from the roll of attorneys or whether an order of suspension from practise will suffice. See *Jasat's case (supra).*

[46] When considering what would be an appropriate order in the circumstances of this case it is necessary to remember that it is not the fundamental purpose of these proceedings to inflict punishment on the respondent. She has already been punished for her offence by the court which convicted her. The applicant society brings the matter of the respondent's misconduct before this Court in the interests of the profession which it serves and in the interests and for the protection of the public. It is very properly jealous of the good name and reputation of the profession and in effect asks this Court by an appropriate order, to manifest its disapproval of conduct which may tend to damage the faith and confidence of the public in the profession. See *Incorporated Law Society Natal and Lambert v Incorporated Law Society,*

1910 TPD77at 79.

[47] When deciding upon the appropriate penalty for proven misconduct the possibility of repetition of the conduct complained of must be taken into account. *Law Society of the Cape of Good Hope, case (supra) 165.* A considerable period has elapsed since her conviction. The respondent has over the years been able to build up a thriving and successful practise. She has all along been practising as an attorney for her own account. The probability, therefore, is that if she is allowed to continue practising as an attorney, she will conduct herself honestly and honourably in future. *Summerly v Law Society of Northern Provinces 2006(5) SA 613(SCA) 620.* Indeed, it cannot be said that the commission of the crime of fraud was due to a moral defect.

[48] Therefore, I am not satisfied that the respondent is inherently a dishonest person. She has clearly learnt a hard and painful lesson. She now fully understands the extent to which her conduct falls short of the high standards that are expected of an attorney. The repetition of the conduct complained of is, in the circumstances, highly unlikely. See *Law Society Cape v Peter 2009 (2) SA 18 (SCA) 24, 24 I.*

[49] The last question for decision is whether protection of the public requires that the respondent must be struck from the roll of attorneys. She has in the last eight (8) years been practising for her own account without any blemish. This, in my view, provides sufficient proof that since her criminal conviction the respondent has genuinely, completely and permanently reformed herself of criminal character, and that she has properly and correctly identified and appreciated the defect of character or attitude involved. See *Exparte Aarons, case at 294 G-I.*

[50] In the premises, factors in this case are extenuating since they do not manifest character defect and a lack integrity and reliability. See *Malan's case (supra) at 226G.*

[51] Surely, in the circumstances of this case it will be quite irrational, grossly unfair and not in the public interest to remove the name of the respondent from the roll. In this regard **Miller J** in *Incorporated Law Society, Natal case (supra) at 150 B-C* said:

> "The implications of an unconditional order removing an attorney from the roll for misconduct are serious and far-reaching. Prima facie, the court which makes such an order visualizes that the offender will never again be permitted to practise his profession because ordinarily such an order is not made unless the court is of the opinion that the misconduct in question is of so serious a nature that it manifests character defect and lack of integrity rendering the person unfit to be on the roll. If such a person should in later years apply for re-admission, he will be required to satisfy the court that he is 'completely reformed character'".

[52] In the result, I am not satisfied that this is the appropriate case in which an order removing the respondent from the roll of attorneys can be granted. Such an action will only be taken if the misconduct she committed shows that she is unworthy to remain on the roll of attorneys. See *Incorporated Law Society, Transvaal case (supra) at 108G.*

[53] In my opinion, her suspension from practise for a period of one year, which suspension must itself be suspended on appropriate conditions for three years, would be desirable and help to redeem the integrity of the profession. See *Botha, Law Society v Northern Provinces 2009(1) SA 227 (SCA) 235H- 236A.*

Order

[54] In the result the following order is made:

1. The Respondent is suspended from practise as an attorney for a period of one (1)

year.

2. The suspension in paragraph 1 above is suspended for three (3) years with effect from 10th December 2010 on condition that the respondent is not found to have committed any dishonest conduct during the period of her suspension.

3. The respondent is ordered to pay the costs of the application on the scale as between attorney and client.

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NORMAN AJ

I agree.

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MADONDO J

It is so ordered.

DATE RESERVED: 10 DECEMBER 2010

DATE DELIVERED: 25 MARCH 2011

COUNSEL FOR APPLICANT: ADV VAN ROOYEN

INSTRUCTED BY: VENN NEMETH & HART INC

(REF: PRJ DEWES / Brenda/32k038709)

COUNCIL FOR RESPONDENT: ADV KEMP SC

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C/O PRAKASH KUSIAL

(REF: V. SINGH)