

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

Case No: 36282/05

**THE LAW SOCIETY OF THE NORTHERN
PROVINCES**

18/10/2010
Applicant

vs

JOSEPH PAPI PEETE

First Respondent

MONTY MICHAEL MAKENA MALEBYE

Second Respondent

JUDGEMENT

SAPIRE, A J:

INTEREST TO OTHER JUDGES: YES / NO
NO
REMARKS:
15/10/10
SIGNATURE

It appears from the heading of the Notice of Motion that there were two respondents in the present application. We were informed that the Applicant was no longer proceeding against the Second Respondent with whom an arrangement had been made which would dispense with the need for the relief claimed against him.

The application is now for the striking off of the First Respondent from the role of attorneys of this court. The Applicant also seeks ancillary relief which is normally granted to enable the Applicant to wind up the professional affairs of the First Respondent. The grounds of the application are that the First Respondent is not a fit and proper person to practise as an attorney.

The Notice of Motion and supporting affidavits were served on the First Respondent who gave notice of intention to oppose the application. The First Respondent has not filed any Affidavits and did not appear to oppose the application when the matter came before the court. The Notice of Set Down for the hearing of this application was properly served upon the First Respondent.

The First Respondent was admitted and enrolled to practise as an attorney on the 19th of December 2006. It is a matter of regret that the present application is made only four years after his admission.

The First Respondent initially practised in partnership with the Second Respondent but latterly has practised for his own account and is presently still on the Roll of Practising Attorneys.

The Applicant has drawn the following to the attention of the court:

- (a) Complaints have been made by the following persons: Makakaba, Choma, Maroga, Mogola, Masehia, Malete, Sefoka and Baloyi (The First Complainants).

The complaints of these individuals relate to their relationship with the First Respondent as clients of his. The complaints are of a similar nature and together indicate a serious unprofessionalism by the First Respondent in the conduct of his practise.

These clients all lodged complaints with the Applicant that they had instructed the First Respondent to act for each of them but that the First Respondent had failed to report to them or to respond to queries raised by them. It is alleged that he also failed to account to these complaints. In the cases of Masehia and Sefoka the First Respondent failed to account for or to refund deposits accepted by him in respect of fees.

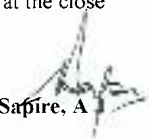
- (b) The First Respondent acted for one Phyllis Boshielo in a matter against the Road Accident Fund (RAF). The First Respondent failed to report to Boshielo or to respond to her queries. Boshielo ascertained that the Fund had paid an amount of R73 883,11 to the First Respondent in settlement of her claim. First Respondent has to date not paid any amount to Boshielo or accounted to her.
- (c) The Sheriff of Groblersdal complained that the First Respondent failed to pay the Sheriff the amount of his account or services rendered and has not remedied this default to date.
- (d) The First Respondent has practised on his own account without a Fidelity Fund Certificate since January 2004. He has failed to pay any subscription since that time nor has he submitted Accountant Certificates for periods since February 2003.
- (e) The First Respondent was called upon to appear before a disciplinary hearing of the Applicant on the 5th of October 2004 and again on the 7th of December 2004. The First Respondent failed to attend either hearing.

- (f) The First Respondent changed his address of his practise and failed to notify the Applicant as he is required to do in terms of the Applicant's Rules. He also failed to so notify his clients.
- (g) The First Respondent failed to co-operate with A T van Rooyen, a management consultant and Forensic investigator who had been appointed by the Applicant to investigate the First Respondent's practise and in particular the First Respondent's accounting records. Van Rooyen made a number of attempts to obtain co-operation but no such co-operation was forthcoming from the First Respondent so that Van Rooyen could not complete his investigation.
- (h) The RAF lodged a complaint with the Applicant to the effect that the First Respondent had failed to repay to the Fund an amount of R13 587,89 which represented an amount overpaid by the Fund to the First Respondent in error. The error was drawn to the attention of the First Respondent. When the First Respondent failed to repay the overpayment the Fund sued the First Respondent. The action was settled at the trial but the Respondent failed to pay the amount of the settlement to the Fund. Execution on the judgement proved fruitless. These circumstances demonstrate not only dishonesty on the part of the First Respondent but are indicative that there must have been a shortage in his Trust account.

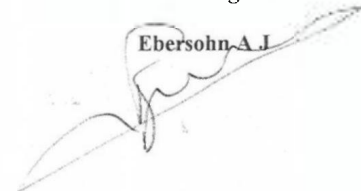
The allegations which have been outlined in the preceding sub-paragraphs establish a strong prima facie case that the First Respondent has conducted his practise in a dishonest and unprofessional manner. This in turn demonstrates that he is no longer a fit and proper person to be on the Roll of Attorneys.

The very fact that the First Respondent has failed to file an Affidavit contesting any of the allegations and has not appeared at the hearing of this application demonstrates that the First Respondent is unable to controvert the Applicant's case. It would seem that he has little interest in the outcome.

There will therefore be an order in terms of the Draft which was submitted at the close of argument.


Sapire, A

I Agree


Ebersohn, A J

Applicant's Attorneys

STEGMANN'S INCORPORATED
1ST FLOOR, CELTIS PLAZA
SOUTH BLOCK
1085 SCHOEMAN STREET
HATFIELD, PRETORIA TEL: 012-342 6430
REF: MR D J STEYN/EP/P3868/05

Respondent's Attorneys

MASHIKE ATTORNEYS
C/O MAODI ATTORNEYS TEL: 012-321 8918
REF: MR PEETE
2ND FLOOR, SUITE 208
SAVELKOU'S BUILDING
CNR PRETORIUS AND PAUL KRUGER STREETS