

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

CASE NO: 79330/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 31/3/2023

WJ du Plessis

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL APPLICANT

and

THEMBA BENEDICT LANGA 1ST RESPONDENT

THEMBA LANGA INCORPORATED 2ND RESPONDENT
(REGISTRATION NUMBER 2[...])

LANGA INCORPORATED 3RD RESPONDENT
(REGISTRATION NUMBER: 2[...])

JUDGMENT

DU PLESSIS AJ

- [1] This is an application to remove Mr Themba Benedict Langa's name from the roll of legal practitioners. Mr Langa (hereafter the Respondent) was admitted and enrolled as an attorney of the court on 16 September 1997, and has been practising for his own account since 1 February 1999 under the name and style of Langa Attorneys. He also practised under the names of the Second

and Third Respondent, albeit without informing the secretary of the Applicant of such a fact.

- [2] He was suspended by this court from practice as a legal practitioner on 27 November 2018, pending this hearing of the application for the removal of his name from the roll of legal practitioners. The case was postponed for various reasons after that, and eventually enrolled and heard on 31 January 2023.

The complaints

- [3] The application by the Legal Practice Council rests on various complaints and allegations. They will be listed and discussed briefly, including the First Respondent's answers to them. I do not intend to deal with each of them separately, as this court is tasked with determining whether the Respondent is a fit and proper person. This does not depend on factual findings but lies in the court's discretion.¹ However, this discretion is informed by what the complaints indicate as to the personal qualities of the Respondent, concerning the prestige, status and dignity of the profession, the integrity and standards of professional conduct, and the responsibility of practitioners.²

- i. Complaint 1: The Respondent failed to lodge an unqualified audit report for the period ending 28 February 2018. He was also not issued Fidelity Fund Certificates for the years commencing January 2016, January 2017, and January 2018 and is thus practised unlawfully.

The Respondent denies that there are problems with his accounts and instead attributes it to "bad debts particularly an outstanding bill to advocates" who raided his office, coupled with "the shadow of the economic woes of the Republic" that also affected the firm. Since the practice was no longer operational, he states, there is no valid complaint with regards to the Fidelity Fund.

¹ *Law Society of the Cape of Good Hope vs C* 1986 (1) SA 616 (A).

² As set out in *Kaplan v Incorporated Law Society, Transvaal* 1981 4 All SA 15 (T) 28.

- ii. Complaint 2: Ms Mathuloe laid a complaint after she instructed the Respondent to act on her behalf in a Road Accident Fund matter, which included securing the removal of her attorney of record. After this, the Respondent denied the complainant access to her RAF funds. He, after that, could not be contacted and moved offices without furnishing Ms Mathuloe with new contact particulars.

The crux of the Respondent's answer³ to these allegations is that he took on this matter *pro bono* to help out Ms Mathuloe, his neighbour and that he never had the mandate to act on her behalf. He held the monies in trust and only took R40 000 for his own account as agreed. The rest of the miscommunication transpired because of the closure of his law firm.

- iii. Complaint 3: Billy Gundelfinger Attorneys laid a complaint in that the Respondent failed to respond to letters, was dishonest and unprofessional towards his colleagues, gave irrational responses, evaded the issues raised and behaved in a racist manner. All this brings the profession into disrepute.

The Respondent's answer to this complaint⁴ is that it is a disagreement with a colleague and that in such disagreements, there are always power relations such as seniority, gender and racial based disputes. He further alleges fraudulent transactions, rudeness and a condescending attitude towards the client. This prompted him to "put him in his place", after which the complainant "ran to his elder brother, the Applicant".⁵

The Respondent further clarifies that the communication was not done in his capacity as an attorney, as it was not on the firm's letterhead, and he was not practising as an attorney then. He did not receive the complaint

³ CaseLines 006-7.

⁴ CaseLines 006-10.

⁵ CaseLines 006-11.

as his principal place of business was closed, and "the Applicant did not guide the Sheriff on how to properly serve the Respondent" (at his home and not at the address registered with them to be the address of his practice). This, the Respondent avers, prejudiced him as far as the process is concerned, denying him his "constitutional right to be treated fairly".⁶

- iv. Complaint 4: Mr Setipa paid R1 000 0000 to the Respondent as a deposit for immovable property. Mr Setipa instructed the Respondent to hold the money in trust until the deposit is payable to the seller of the immovable property. Two weeks later, Mr Setipa made a further payment of R100 000 into the trust account. Three additional payments were made, totalling R300 000. The Respondent failed to pay the deposit of R1 000 000 in favour of the seller.

This, the Respondent stated, is because the monies were paid into a business account and, due to an overdraft facility, were debited by the bank. The Respondent avers that the monies were paid into his business account and not his trust account because he informed the complainant that he could not receive substantial amounts of cash into his trust account if the source thereof is dubious. He does not think it fair that the Applicant holds him accountable for the complainant's action (depositing the monies into his business account).

Nevertheless, the Respondent stated that he paid back an amount of R550 000 but remains indebted to Mr Setipa in the amount of R450 000. The Respondent endeavoured to repay R350 000, and to retain the amount of R100 000 until his fees for work done were invoiced and debited. The Respondent, however, failed to furnish the complainant with an invoice regarding services allegedly rendered, which would explain holding back R100 000, which the Respondent claims to hold in trust.

⁶ CaseLines 006-12.

- v. Complaint 5: Yousha Tayob Attorneys' complaint relates to the Respondent entering an appearance to defend a matter on behalf of a client but not providing a valid address where documents could be served. This halted the litigation. It transpired that the Respondent no longer conducted business at the address as reflected on the Applicant's records, and the Respondent could also not be reached on the telephone.

The Respondent attribute this to the closing of his offices and views the Applicants' actions in this regard as the Applicant "using an innocuous enquiry for its own ulterior motive to achieve its agenda".⁷

- vi. Complaint 6: Ms Beeby paid R12 000 to the Respondent to structure and register a company. When Ms Beeby enquired with the CIPC about the company, she was told that the company was already registered but that payment was due. Ms Beeby then realised that the Respondent moved offices and did not respond to emails or phone calls.

The Respondent states that this complaint has been addressed and resolved and that the Applicant throws in this complaint to mislead the court. Every inquiry should not be treated as a complaint.⁸ This allegation is not in contravention of any Act.

- vii. Complaint 7: Prof Mosimege employed the Respondent to represent him in a labour matter following his dismissal from UNISA. He paid R200 000 to the Respondent and requested various times for a statement of account for services rendered. Furthermore, the Respondent's failure to update Prof Mosimege in his case against UNISA caused unnecessary and costly delays.

⁷ CaseLines 006-18.

⁸ CaseLines 006-19.

The Respondent states that he provided the Applicant with an explanation and that the matter has been attended to and finalised. The missing court file was the reason for the delays. Again, the difficulties with not having access to documents and the information infrastructure at the office was raised as an issue in the denial of the allegations.

- viii. Complaint 8: Mr Rabie complained of the Respondent's questionable professional conduct. Mr Rabie was employed as a Chief Director in a Government Department. The Respondent was instructed to assist in amending a summons issued, and an advocate was appointed to help with the drafting. A deposit of R114 000 was paid for the fees of the advocate with the help of a friend. The Respondent did not pay the fees and accused Mr Rabie of corrupt activities involving this friend, which Mr Rabie deems extortion of money for blackmail. The invoices submitted for payment were paid in full. However, when further objections were raised against the summons and particulars of claim, the Respondent withdrew as attorneys of record. When the complainant asked for a full statement of account, the Respondent did not provide one. Mr Rabie then asked for the repayment of the R114 000 holding fee for the advocate.

The LPC asserts that this extortion of the complainant is criminal, and that the Respondent failed to report the alleged criminal activity of Mr Rabie to the South African Police Service, while accepting the payment.

The Respondent states that this complaint was also attended to and that there was no clear indication from the Applicant whether the response received was adequate.⁹ This process lacks transparency and fairness, as it is only once there is an application to be struck from the role that an attorney knows the position of the Applicant. Instead, the Applicant should

⁹ CaseLines 006-21.

be bound by the attorneys' response unless it has notified the attorneys otherwise.¹⁰

The Respondent responded further by stating that the client is vexatious,¹¹ and belligerent. Since he did not have access to his office files as it was confiscated by his landlord, he thus did not have evidence to rebut the allegations. The Respondent denies the extortion, stating that the mandate was terminated and that he struggled to get the fees from the client. Furthermore, the client reported him to the police, which complaint was not entertained by the police. Despite all this, the Respondent "enjoyed working with Mr Rabie".¹²

- ix. Complaint 9: Ms Mopeli instructed the Respondent to oppose a review application brought by her employer against a CCMA award granted in her favour. She paid the Respondent R86 000 and requested Respondent to furnish her with a statement of account for the services, which he failed to do. The Respondent did not execute his mandate as Ms Mopeli heard through her worker's union that the Labour Court ordered that the award be set aside and the referral dismissed. This with Ms Mopeli not even knowing that the matter was enrolled for a hearing and the Respondent failing to attend the court proceedings.

The Respondent states that by the time the complainant went to the Labour Court, he was no longer the attorney of record. The Labour Court matter also happened when the Sheriff attached and removed their IT infrastructure.

- x. Complaint 10: Mr Msibi instructed the Respondent to assist with a matter pending before the Companies Tribunal, specifically asking Respondent to argue the matter before the tribunal on 26 October 2016. However, when the parties arrived to attend the hearing, they were informed the

¹⁰ CaseLines 006-22.

¹¹ CaseLines 006-21.

¹² CaseLines 006-23.

Respondent had asked for the matter to be postponed at 19:00 the previous day. This was in contrast to Respondent assuring Mr Msibi, just before the hearing, that he was on his way to the hearing. The hearing then proceeded without any legal representation resulting in a cost order granted against Mr Msibi and the shareholders.

The Respondent cited this as another pro bono matter, which only included the consultation, the research and the drafting of documents. The agreement was not that there would be an appearance on their behalf. Even if there were such an agreement, this would not be possible as the Respondent was evicted from the office and did not have access to the files.

- xi. Complaint 11: Stirk Yasbek Attorneys Notaries & Conveyancers assisted the Respondent with a matter in East London. The Respondent failed to settle the statement of account, despite making various undertakings to pay or even stating that the account was paid.

The Respondent replies to this stating the severe impact that the attachment of the files, the IT infrastructure, and the eviction from the offices had on its ability to do business. Due to the lack of access to this information, the Respondent believed the invoices were paid. The Respondent then suggests that the Applicant develop a protocol for the Sheriff to preserve information when attaching the assets of practitioners hit by hard economic times.

- xii. Complaint 12: Mr Kganakga instructed the Respondent and senior counsel to represent him in a criminal trial. He paid an initial deposit of R20 000, followed by various payments totalling R998 402. The Respondent never furnished him with a proper statement of account, including the invoices of senior counsel. The Respondent also failed to pay senior counsel for three months in 2014, notwithstanding that he could do so, resulting in senior counsel refusing to proceed with the matter. Mr Kganakga had to appoint new attorneys.

The Respondent indicated that senior counsel was appointed and that the matter continued until there was a dispute about the balance that was held in the firm's trust account. He also agreed to settle the complainant's claim even though he had no records in his firm's system of the amount that the complainant claimed as the firm's software started to "misbehave" in 2014. The Applicant's Fee Assessment Committee calculated an amount of R133 868 that he must refund the complainant. The committee also found that the Respondent failed to keep proper accounting records.

The Respondent agrees that there is disagreement with the client. The Respondent then states that the Applicant's ad hoc committee persuaded him to pay the monies, even though the client "committed fraud of millions of rands". He denies that the Fees Assessment Committee sat and determined the matter and that the Applicant's Disciplinary Committee ever dealt with the matter.

- xiii. On top of the complaints, the Respondent's estate was placed under final sequestration by order of this Court on 31 May 2018. In terms of section 22(1)(e) of the Attorneys Act, the Respondent has to satisfy this Court that he is still a fit and proper person to continue to practise as an attorney notwithstanding the fact that his estate was sequestered. The Respondent states that the order for sequestration was made on default as the attorney and the counsel who represented him "simply dropped" him.¹³ The attorney did not file the opposing affidavit, and the advocate told the court that he was doing the Respondent a favour; he was not there to present him. His new attorneys are trying to lodge an appeal against the default judgment.

The Respondent further states that "[s]ince September 2016 I have not been practicing as an attorney and I will not practice until I pay all my

¹³ CaseLines 006-28.

creditors and finalise the appeal on the sequestration matter".¹⁴ The Applicant points out that if the Respondent indeed stopped practicing as an attorney, he failed to submit his firm's closing audit report, or to inform the Applicant that he is closing his practice.

xiv. Then there was also the report by Semelane, an auditor. Semelane visited the firm's offices on 17 January 2018 but found the office vacant. The Respondent then informed Semelane that he no longer practices at the address on the Applicant's records since he experienced financial difficulties. When asked for accounting records, the Respondent could not provide them. On 15 February 2018, there was a balance of R0 in the firm's Nedbank trust account. Additional as to what was set out above, Ms Semelane further found:

a. As to the complaint by Mr Setipa, the Respondent explained that R900 000 was made into his business account and that due to his financial difficulties, the overdraft was debited against the deposit made by the complainant. The Respondent denies the finding that Mr Setipa deposited R900 000 into his account. It was R550 000 in his trust account and R450 000 in cash in his business account. He did repay the complainant an amount of R550 000, and he had arranged to repay the balance of R450 000 by 15 May 2018.

b. As for Mr Kganakga, the Respondent stated that he settled the matter in 2015, repaying the complainant the amount due. The Respondent repeated that he paid Mr Kganakga even though he was unaware that they "were dealing with someone who had committed fraud of millions of rands from the IDC".¹⁵ There is, however, no proof of payment.

¹⁴ CaseLines 006-28.

¹⁵ CaseLines 006-30.

c. Regarding the complaint of Stirk Yasbek Attorneys, the Respondent admitted that he engaged their services but that due to his financial difficulties, he could not pay the outstanding R34 685, 85. The Respondent denies the allegations about Stirk Yasbek Attorneys, saying they were not paid because the Respondent was locked in a dispute over payment with a municipality. Still, the new attorneys attended to the payment.

d. As for the trust account, there is a deficit of more than R2,4 million. Regarding this trust deficit, the Respondent claims that the Applicant "developed a 'make believe scenario' methodology that purports to create their desired outcome through the simulation of factors that they only have chosen".¹⁶ This methodology is employed to "fake the numbers, and thereafter attribute those bizarre and dirty outcome to the Respondents".¹⁷

The Respondent agrees that the Semelane report was not compiled with his assistance or consent.

The law

(i) Nature of the proceedings

[4] During argument the crux of the Respondent's answers to the allegations centred around the situation he found himself in once he was sequestered and evicted from his offices in 2016. In its heads of argument, counsel for the Respondent argued that the removal of the infrastructure by the Sheriff, and the eviction from the premise, led to procedural unfairness on the part of the Applicant's processes and its decision to refer the matter to the High Court. The Respondent submits "there are no reasons provided for in the Act for the rational (sic) for the differentiation of the referral to the disciplinary proceeding's (sic) vis-vis (sic) the application to this Honourable Court".¹⁸

¹⁶ CaseLines 006-30.

¹⁷ CaseLines 006-30.

¹⁸ CaseLines 045-11.

[5] The Respondent avers that reading the Attorneys Act¹⁹ and the Legal Practice Act²⁰ only complaints that are serious ought to be referred to court, citing various cases.²¹ The process thus embarked on by the Applicant is procedurally unfair, as the referral of the matter to the High Court falls within the discretion of Council, which discretion was not rationally exercised as they ought to have dealt with the matters themselves. It seems that the argument is that the complaints are not serious enough for the court to consider. Rather, the sequestration and the subsequent removal of infrastructure and eviction from their offices made it impossible for the Respondent to cooperate with the investigation of the Applicant and that, as such, the investigation was defective, which invalidates the whole procedure followed up to date, including the referral to the High Court.

[6] The Attorneys Act²² in s 71 sets out a process to be followed when an inquiry is made into alleged cases of unprofessional conduct, and in s 72(6) states that [t]he provisions in this section shall not affect the power of (a) a society to apply in terms of the provisions of this Act for the suspension from practice or the striking from the roll of any practitioner against whom an enquiry is being or has been conducted in terms of this Act in respect of the conduct which form or formed part of the subject matter of such enquiry;

(b) a competent court, at the instance of the society concerned, to suspend any practitioner from practice or to strike him from the roll.

[7] Likewise, the Legal Practice Act²³ in s 37 identifies three disciplinary bodies, and sets out the procedure to be followed by the council during disciplinary

¹⁹ 53 of 1979.

²⁰ 28 of 2014.

²¹ *Cape Law Society v Gihwala* [2019] 2 All SA 84 par 110; *Law Society of the Northern Provinces v Morobadi* [2018] ZASCA 185 par 32; *The Legal Practice Council v Motlhabani* [2020] ZSNWHC 76 par 34.

²² Attorneys Act 53 of 1979

²³ Legal Practice Act 28 of 2014.

proceedings in subsequent sections. However, s 44(1) of the Legal Practice Act²⁴ makes it clear that

"[t]he provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner [...]"

- [8] It is correct that the Acts themselves do not state when the Council must or may refer a matter to Court. This is set out in case law. From the case law, specifically the paragraphs quoted by the Respondent, it is clear that "a society may decide that the evidence before a partially completed inquiry is of such a conclusive or overwhelming nature [...]"²⁵ that it would be in the interest of justice that such an application be made to the High Court. Likewise, in *Law Society of the Northern Provinces v Morobadi*²⁶ the court stated that the Council may proceed with the application for the striking off of the practitioner's name from the roll if, after having regard to the charges, it is of the opinion that the practitioner is no longer a fit and proper person. The Respondent's argument thus only holds if he deems the transgressions not serious enough to warrant suspension or removal. That is, however, precisely the argument that the Council makes in this application: that all these complaints considered together are serious enough to indicate that the Respondent is not fit and proper to continue practising as an attorney, which is the issue the court must now decide.

(ii) Provisions contravened

- [9] The Applicant avers all this contravenes the various provisions of the Attorneys Act and the Rules for the Attorneys Profession. A list of the provisions contravened are that the Respondent:

²⁴ Legal Practice Act 28 of 2014.

²⁵ *Cape Law Society v Gihwala* [2019] 2 All SA 84 par 110.

²⁶ [2018] ZASCA 185 par 32.

- i. practised without a Fidelity Fund Certificate;²⁷
- ii. failed to submit unqualified audit reports;²⁸
- iii. failed to work in a competent and professional manner;²⁹
- iv. failed to notify the Applicant of a change of address;³⁰
- v. failed to pay a client within a reasonable time;³¹
- vi. failed to engage and answer to questions and directives of the Applicant;³²
- vii. failed to account to clients, in writing, of the work done and the fees charged;³³
- viii. failed to ensure that there is sufficient money in the firm's trust account;³⁴
- ix. failed to ensure that no account of any trust creditor is in debit;³⁵
- x. failed to ensure that the accounting records were updated and balanced on a monthly basis;³⁶
- xi. failed to ensure that transfers to the firm's business account were made in respect of fees and disbursements due to the firm;³⁷

²⁷ Sections 41(1) and (2) of the Attorneys Act.

²⁸ Rule 35.23.

²⁹ Rules 40.10 and 49.13.

³⁰ Rule 2.20.

³¹ Rule 35.12.

³² Rules 47.1, 47.2 and 47.3.

³³ Rule 35.11.

³⁴ Section 78(1) of the Attorneys Act.

³⁵ Rule 35.13.9.

³⁶ Rule 35.9.

- xii. failed to retain the firm's accounting and other records for at least five years at the main office;³⁸
- xiii. failed to ensure that trust funds are not deposited into the business account;³⁹ failed to keep proper accounting records and failed to report the trust deficit to the Applicant;⁴⁰
- xiv. and failed to maintain accounting records as necessary to represent fully and accurately in accordance with generally accepted accounting practice, the state of affairs and business of the firm, and to explain the transaction and financial position of the firm.⁴¹

[10] This long list of provisions contravened is substantial and serious, and it goes to the core of being an attorney and how a practice should be managed.

[11] Applications for removing an attorney's name from the roll of practitioners are not ordinary civil proceedings. They are proceedings of disciplinary nature and *sui generis*.⁴²

[12] In proceedings such as these, the Applicant is not litigating against the attorney but instead performing its statutory duties of presenting evidence and material relating to the allegations of misconduct against the practitioner to the court. The court, not the Applicant, suspends practitioners from practicing as attorneys and removes names from the roll of attorney.⁴³

³⁷ Rule 35.13.14.

³⁸ Rule 35.8.

³⁹ Rule 35.10.

⁴⁰ Rule 35.13.10.

⁴¹ Section 78(4) of the Attorneys Act.

⁴² *Solomon v Law Society of the Cape of Good Hope* 1934 AD 401 at 408-409; *Hepple v Law Society of the Northern Provinces* [2014] ZASCA 75.

⁴³ CaseLines 008-9.

(iii) Three-stage inquiry

- [13] The inquiry is a three-stage inquiry:⁴⁴ Firstly, whether the conduct has been established on a balance of probabilities. Secondly, whether the person concerned is "fit and proper" to continue to practice as an attorney, and thirdly, whether, considering all circumstances, the name of the attorney should be removed from the roll or if the attorney must be suspended from practice.
- [14] A finding that an attorney is not "fit and proper" does not automatically mean that a practitioner's name must be struck off the roll.⁴⁵ *Malan v Law Society of the Northern Provinces*⁴⁶ states that in considering the sanction the court must consider the nature and the seriousness of the misconduct in its totality and how it reflects on the practitioner's character as a member of the profession, the probability of the conduct repeating and the need to protect the public. Removal is not the only sanction should a court find the practitioner not fit and proper. Removing a practitioner is serious, with dire consequences for the individual practitioner. The court also does not do so lightly, as there are serious implications for an attorney not being able to practice.

Did the conduct happen on a balance of probabilities?

- [15] There is nothing to suggest that the conduct complained of did not happen. In fact, the Respondent admits to many of them, in some instances providing explanations, sometimes without proof, while in other cases blaming the clients for his conduct. In many of the replies, he does not deny what is alleged but instead states that the client has an agenda or brings the complaint because they are vexatious and criminal. Some of the other conduct, specifically the complaint by Guldenfinger, was also not denied but instead sought to be justified.
- [16] The Respondent, in some instances, make off the complaints as not serious enough to warrant a court application and that it should be seen as part of the

⁴⁴ *Malan v Law Society of the Northern Provinces* [2008] ZASCA 90.

⁴⁵ *Malan v Law Society of the Northern Provinces* [2008] ZASCA 90 para 8.

⁴⁶ [2008] ZASCA 90.

Applicant's agenda. He explains the adverse impact of his sequestration on his ability to practice and contact clients is not denied, but is rather blamed on the Applicant's inefficient processes dealing with sequestered attorneys. This despite not follow the rules of winding up a practice.

[17] It is also clear from the facts that the Respondent continued to practice without a fidelity certificate in 2016. Various signatures on emails and other correspondence sent by the Respondent from his firm's email account show that the Respondent still indicated his firm's address as the address registered at the LPC. These emails were sent during 2016, even though he did not have a fidelity certificate to practice in 2016 and thereafter. Even in his reply to Mr Msibi's complaint he admits that he did work in 2016.

[18] Furthermore, if he indeed ceased to practice, he did not inform the Applicant of the fact and did not comply with the requirements of winding up his practice. This all shows a propensity not to follow the law and the Rules governing the practice of the legal profession. The mismanagement of his practice, the lack of proper accounting, practising without a Fidelity Fund Certificate, the substantial trust deficit, and all the other things mentioned above are thus not substantially denied, but what the Respondent denies is that he is to be held accountable for any of it.

Is the Respondent fit and proper?

[19] The facts must not be considered in isolation but in their totality.⁴⁷ The failure to lodge unqualified audit reports and practising without Fidelity Fund Certificates are on their own serious allegations. The accumulation of the complaints listed above, proven on a balance of probabilities, shows persistent questionable conduct by the Respondent.

⁴⁷ *Law Society Transvaal v Matthews* 1989 (4) SA 389 (T); *Malan v Law Society of the Northern Provinces* [2008] ZASCA 90.

- [20] Trust money does not form part of the assets of a legal practitioner. The concept of a Trust Fund relies on the confidence and trust that placing money in the fund is a low risk due to all the rules and regulations surrounding such a fund. This requires strict adherence to the Legal Practice Act, the Attorneys Act, and the Rules for the Attorneys Profession. Failure to do so undermines the system on which the trust is built. It is the court's duty to maintain the integrity, dignity, and respect for officers of the court to deserve the public's respect, by striking those off the roll who do not adhere to these standards.
- [21] The Respondent must maintain the highest standard of honesty and integrity. It is also bound by the ethical standards prescribed by the Code of Conduct and any ethical standards generally recognised by the profession.⁴⁸ One of the standards in the Code is to behave towards colleagues and members of the public with integrity, fairness and respect, and to avoid any insulting or demeaning behaviour.⁴⁹
- [22] The Respondents correspondence to various complainants, but specifically to the attorney at Billy Guldefinger Attorneys, and his description of his clients Mr Kganakga and Mr Rabie, lacks the integrity expected from legal practitioners. Furthermore, the allegations levelled against the Applicant, without providing any proof of the allegations, is lamentable.
- [23] All this indicates that the Respondent is not fit and proper to be a legal practitioner.

Should his name be removed?

- [24] The court does not seek to punish the Respondent for his conduct but rather must ensure that the Respondent as an officer of this court does his work in a manner that is above suspicion and with integrity.⁵⁰ The court can either do so

⁴⁸ See paragraph 3.1 and 3.3 of the Code of Conduct.

⁴⁹ Paragraph 3.14.

⁵⁰ *Law Society v Du Toit* 1938 OPD 103.

by suspending the Respondent, or by striking his name off the roll of legal practitioners.

[25] The transgressions, as proven by the Applicant and not refuted by the Respondent, is serious. Considering the totality of the infractions, I find that the Respondent's conduct is not in line with the standards of professional conduct or what is expected of a practitioner. It lacks the honesty, integrity, and professionalism that is expected from a legal practitioner practicing in this court. The substantial trust deficit, the mismanagement of the practice, and practicing without a Fidelity Fund Certificate are serious infringements that warrant the striking of his name off the roll.

Order

[26] I, therefore, make the following order, in line with the Draft Order:

1. That the name of Thembe Benedict Langa be removed from the roll of legal practitioners of this Court.
2. The Frist Respondent immediately surrenders and deliver to the registrar of this Honourable Court his certificate of enrolment as a legal practitioner of this Court.
3. That in the event of the Frist 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, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.
4. That the Respondents be prohibited from handling or operating the trust accounts as detailed in paragraphs 5 hereof.
5. That Johan van Staden, the Director of the Gauteng Provincial Office of the Applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of the Respondents, including accounts relating to insolvent and deceased estates and any

deceased estate and any estate under curatorship connected with the Respondent's practice as a legal practitioner and including, also, the separate banking accounts opened and kept by the Respondents at a bank in the Republic of South Africa in terms of section 86(1) & (2) of Act 28 of 2014 and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4) of Act 28 of 2014, 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 Respondents accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the Legal Practitioners' Fidelity Fund board of Control (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 Respondents were acting at the date of this order;
- 5.2. subject to the approval and control of the Legal Practitioner's Fidelity Fund Board of Control and where monies have 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 Respondents in respect of monies held, received and/or invested by the Respondents in terms of section 86(1) & (2) and/or section 86(3) and/or section 86(4) or Act 28 of 2014 (hereinafter referred to as trust monies), 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 Respondents were 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 Respondents' accounting records the names of all persons on whose account the Respondents appear to hold or to have

received trust monies (hereinafter referred to as trust creditors) and to call upon the First Respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree 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 may require to enable him, acting in consultation with, and subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondents 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 Legal Practitioners' Fidelity Fund Board of Control, 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 considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

5.7. in the event of there being any surplus in the trust account(s) of the Respondents 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 Act 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondents, 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 Respondents to the 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 Legal Practitioners' Fidelity Fund Board of Control, to the First Respondent, if he is solvent, or, if the First Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

5.8.in the event of there being insufficient trust monies in the trust banking account(s) of the Respondents, 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 Legal Practitioners' Fidelity Fund;

5.9.subject to the approval of the chairman of the Legal Practitioners' Fidelity Fund Board of Control, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

5.10. to render from time to time, as curator, returns to the Legal Practitioners' Fidelity Fund Board of Control showing how the trust account(s) of the Respondents has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That the Respondents immediately deliver the accounting records, records, files and documents containing particulars and information relating to:

6.1.any monies received, held or paid by the Respondents for or on account of any person while practicing as legal practitioner;

6.2.any monies invested by the Respondent in terms of section 86(3) and/or section 86(4) of Act 28 of 2014;

6.3.any interest on monies so invested which was paid over or credited to the Respondents;

- 6.4. any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the Respondents, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5. any insolvent estate administered by the Respondents as trustee or on behalf of the trustee in terms of the Insolvency Act 24 of 1936;
 - 6.6. any trust administered by the Respondents as trustee or on behalf of the trustee in terms of the Trust Properties Control Act 57 of 1988;
 - 6.7. any company liquidated in terms of the provisions of the Companies Act 61 of 1973, read together with the provisions of the Companies Act 71 of 2008, administered by the Respondents 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 Respondents as or on behalf of the liquidator; and
 - 6.9. the First Respondent's practice as a legal practitioner of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, file and documents are concerned, the Respondents 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 Respondents fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the Respondents (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 may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the Respondents and/or the Respondents' clients and/or the fund in respect of money and/or other property entrusted to the Respondents 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 considers appropriate; and

8.4. wind-up the Respondents' practice.

9. That the First Respondent be and is hereby removed from office as:

9.1. executor of any estate of which the First Respondent has 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 and read together with the provisions of the Companies Act 71 of 2008;

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; and

9.7. administrator appointed in terms of section 74 of the Magistrates Court Act, 32 of 1944.

10. That the Respondents be and is hereby directed:

10.1. to pay, in terms of section 87(2) of Act 28 of 2014, the reasonable costs of the inspection of the accounting records of the Respondents;

10.2. to pay the reasonable fees of the auditor engaged by the Applicant;

10.3. to pay the reasonable fees and expenses of the curator, including travelling time;

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

10.5. to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

10.6. to pay the cost of this application on an attorney-and-client scale.

11. That if there are any trust funds available the Respondents 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 First Respondent in respect of his former practice, and shall 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 the certificate issued by the director of the Legal Practitioners' Fidelity 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.

WJ DU PLESSIS

Acting Judge of the High Court
Gauteng Division, Pretoria

I agree

D MAKHOB

Judge of the High Court
Gauteng Division, Pretoria

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be sent to the parties/their legal representatives by email.

Appearances

For the Applicant:

Instructed by:

Ms Magardie (attorney)

DAMONS MAGARDIE RICHARDSON
ATTORNEYS

For Respondent:

Instructed by:

Adv Mpya

KMG & ASSOCIATES
INCORPORATED

Date of the hearing:

31 January 2023

Date of judgment:

31 March 2023