IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case No: 1381/2023

In the matter between:

THE SOUTH AFRICAN LEGAL PACTICE COUNCIL **APPLICANT**

and

WALTER DU TOIT **RESPONDENT**

JUDGMENT

CORAM: NAIDOO J

HEARD ON: 31 MARCH 2023

DELIVERED ON: 2 MAY 2023

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[1] The applicant (the LPC) moved this application, on an urgent basis, in which it sought a *rule nisi*, calling upon the respondent to show cause why a final order should not be granted, *inter alia*, for the suspension of the respondent from practising as an attorney pending the finalisation of a disciplinary enquiry to be instituted against him by the LPC, alternatively, pending an application to be launched by the LPC to have the name of the respondent struck from the roll of Legal Practitioners of South Africa. The respondent opposed the application but took no issue with urgency. Adv (Mr) MS Mazibuko represented the applicant, and Adv (Mr) MDJ Steenkamp represented the respondent.

[2] The respondent is a practising attorney and enrolled as such in the records of the LPC, which reflect that he practises under the name and style of Walter du Toit Attorneys Inc at 101A, corner Van Heerder and Tulbach Streets, Welkom, Free State Province. In reality however, it appears that the respondent has ceased to practice for his own account and is currently employed as a consultant by a firm of attorneys, De Wet Wepener Attorneys Inc, in Welkom. It is not in dispute that the respondent ceased practice and closed his offices, without informing the LPC or following the prescribed procedures for closure of his practice.

[3] This application was precipitated by an investigation and recommendations by the LPC's (Free State) Provincial Investigation Committee (the Investigation Committee), who acted upon a complaint against the respondent from Nedbank Limited (Nedbank) regarding serious allegations of misconduct and, in particular, misappropriation of funds belonging to deceased estates.

The respondent was appointed as the executor or agent of a number of deceased estates and Nedbank complained that he defrauded these deceased estates of a total amount of Two Million Seven Hundred and Seventy Five Thousand Two Hundred and Sixty Eight Rand and Twenty Cents (R2 775 268.20)

[4] In summary, the Investigation Committee found that the respondent opened several banking accounts with Nedbank for the purposes of administering the deceased estates I have mentioned. During the period 16 January 2017 and 28 June 2022, the respondent made several requests to Nedbank for payment to two entities, R-5 Repairs and X-Tream Autobody, ostensibly for repairs to motor vehicles belonging to the relevant deceased estates. Nedbank made such payments into the bank accounts of the two entities, on the strength of the respondent's requests. In some instances, the request was for payment directly into the respondent's Trust Account, which was accordingly done.

[5] Nedbank's investigations revealed that the two entities I have mentioned were not legally incorporated and the two Capitec bank accounts into which Nedbank had paid the requested amounts belonged to a Ms Suzette Greyling. Some of the vehicles alleged to have been repaired did not belong to the deceased estates, while those vehicles belonging to the relevant deceased estates were never repaired by R-5 Repairs or X-Tream Autobody. Nedbank discovered these fraudulent transactions in September 2022 and lodged a complaint with the LPC.

[6] The respondent does not deny the fraud but blames this conduct on a former employee of his, one Mr Patrick Maleme (Maleme). He

also does not deny that the total loss is in the amount of R2 775 268.20, alleging that he was only able to verify an amount of approximately R1.7 million because his bank accounts were frozen by Nedbank, preventing him from proceeding further with his investigation. Mr Maleme was employed by the respondent as a messenger, interpreter and assistant in the estates department of his firm. From the respondent's exposition of Maleme's duties and the manner in which he dealt with deceased estates, it appears that there was little or no supervision or oversight by the respondent in respect of deceased estates to ensure that all transactions in respect thereof were legitimate.

[7] Similarly, the respondent blames another employee, Ms Bosch, for the manner in which the Liquidation and Distribution Accounts (L& D accounts) in respect of the deceased estates was compiled. The transactions relating to the repairs of motor vehicles belonging to the deceased estates was not reflected in the L&D accounts and the respondent alleges that he only verified about 40- 50 % of Ms Bosch's work. This once again speaks of a lack of oversight and supervision on the part of the respondent.

[8] For the purposes of this application, I do not deem it necessary to traverse the details surrounding the various transactions as there is no real dispute by the respondent as to the manner in which the fraudulent transactions were perpetrated, and that the heirs to the deceased estates are being seriously prejudiced. The conduct of the respondent in respect of the closure of his practice is also very worrisome. He did not seek the assistance and guidance of the LPC in ensuring that the files and clients' interests were properly secured and that there was a proper accounting for funds he held

on behalf of clients. There has been no closing audit, as required by the Rules governing the legal profession. The respondent denied any wrongdoing on his part, and particularly that he had any involvement in the fraudulent transactions mentioned herein.

[9] The court enquired whether the Fidelity Fund would make good any losses suffered by the deceased estates and/or heirs thereto. Mr Mazibuko expressed doubt that they would, as he was of the view that it was the negligent acts of the practitioner that were insured and not acts of third parties. Mr Steenkamp was not able to take that matter further. Upon a further enquiry from the court regarding the fate of all the client files in the respondent's practice, a disturbing explanation was tendered. The respondent apparently took all the files and advised his clients of the situation. Some clients terminated his mandate, while others requested him to keep the files. With regard to the work in progress, such as trials, applications and the like, the respondent continues to act in these matters. This, in itself, is improper and unprofessional conduct, which warrants the intervention of the court and the LPC to protect the public interest, failing which the integrity of the profession will most likely be called sharply into question.

[10] The LPC seeks an interim order for the suspension of the respondent from practising as an attorney, as well as the appointment of a *Curator Bonis* to administer the practice of the respondent, in order to secure and protect the interests of the members of the public. The LPC seeks such suspension as a precautionary measure in the public interest, and such suspension

was considered to be necessary and appropriate by the Supreme Court of Appeal. (See *Law Society of the Northern Provinces v*

Morobadi [2018] ZASCA. 185). In my view that would be an appropriate course in this matter.

[11] The respondent simply pleads for the leniency of being allowed to continue practising as an attorney in order to earn a living. The intended investigation by the LPC would not, in all probability, be able to proceed unhindered if the respondent were allowed to practice. More importantly, in the face of such serious allegations, it is necessary to prevent the respondent from practising for his own account in order to protect the members of the public and his clients from further prejudice. The respondent, if he is indeed innocent of wrongdoing, will have the opportunity of presenting the necessary evidence to prevent a final order being granted on the return day of the *Rule Nisi* being sought.

[12] In the circumstances, I make the following order:

12.1 A rule nisi is issued, returnable on 20 July 2023 at 9h30 or so soon thereafter as the applicant's legal representatives may be heard, why the following orders should not be made final:

12.1.1 WALTER DU TOIT (the Respondent) is suspended from practice as a legal practitioner of the High Court of South Africa pending the finalisation of a disciplinary inquiry to be instituted against him by the Applicant, <u>alternatively</u> pending an application to be launched by the Applicant to have the name of the Respondent struck from the roll of Legal Practitioners of the High Court of South Africa;

12.1.2 The Respondent is prohibited, with immediate effect, from operating and dealing with any of the trust banking accounts of his practice(s), the banking accounts of any deceased estates in respect of which the Respondent has been appointed as executor or Master's representative and any banking accounts of any insolvent estates in respect of which the Respondent has been appointed as a liquidator;

12.1.3 The Respondent shall immediately surrender and deliver to the Registrar of this Court his certificate of admission as a legal practitioner of this Court.

12.1.4 In the event of the Respondent failing to comply with paragraph 12.1.3 of this order within two (2) days from the date of service of this order on him, the sheriff be and is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Court.

12.2 Margarette van Wyk and her successor(s) in-title be and is appointed as *curator bonis* (the Curator) of the practice of the Respondent and to administer and control the trust accounts of the Respondent and any accounts relating to insolvent and deceased estates and any deceased estate and any estate under Curatorship connected with the Respondent's practice as an attorney and including the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of section 86(1) of the Legal Practice Act No 28 of 2014 (the Act) and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4) of the Act, 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 as set out in paragraph 12.4 hereunder.

12.3 The Applicant and Margarette van Wyk be exempted from furnishing security for the performance of their obligations as curator *bonis*.

12.4 The Respondent is ordered to deliver all of the records relating to his legal practice, which for all the purposes of this order, but without limitations, will include all accompanying records, files, correspondence and documents which are directly or indirectly relevant to or which contain particulars of information relating to:

(a) any monies received, held or paid by the Respondent for or on account of any person;

(b) any monies invested by the Respondent in terms of any provisions of section 86 of the Act;

(c) any interest on monies so invested in terms of section 86(3) or section 86(4) of the Act;

(d) any estate of a deceased person administered by the Respondent whether as executor or on behalf of the executor, in terms of the provisions of the Administration of Estate Act, Act 66 of 1965;

(e) any estate in which the Respondent acted as or on behalf of the Curator to administer the property of a minor child or any other person in terms of section 72 of the Administration of Estate Act, Act 66 of 1965;

(f) any insolvent estate administered by the Respondent as trustee or on behalf of the trustee in a trust in terms of the Insolvency Act, Act 24 of 1936;

(g) any trust administered by the Respondent as trustee(s), or on behalf of the trustee in terms of the Trust Property Act, Act 57 of 1988;

(h) any company liquidated in terms of the Companies Act, Act 61 of 1973, administered by the Respondent as Liquidator(s) or on behalf of the liquidator;

(i) any Close Corporation liquidated in terms of the Close Corporation Act, Act 69 of 1984, administered by the Respondent as liquidator or on behalf of the liquidator;

(j) the Respondent's practice as an attorney/ legal practitioner of this Court, and any related files of any Client.

12.5 Should the Respondent fail to comply with the provisions of the preceding paragraph 12.4 of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he/she has been unable to effect service thereof on the Respondent (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.

12.6 The said Curator shall have the following powers:

(a) to hand over any of said records to any person entitled thereto, as soon as she has satisfied herself that the fees and disbursements in connection thereof have been paid or satisfactorily secured, or that same are no longer required;

(b) to accept a written undertaking by a trust creditor to pay such amount as may be due to the Respondent, either on taxation, assessment or by agreement, as satisfactory security for the purpose of paragraph 12.6(a) above, provided that such written undertaking incorporates a *domicilium citandi et executandi* of such creditor;

(c) to require that any records so handed over, be delivered back to her if in her sole and absolute opinion, she considers them to be relevant to and (including any possible anticipated or threatened claim against her as *curator bonis* and/or the Respondent's clients and/or the Legal Practitioners Fidelity Fund (the Fund);

(d) to administer and control all of the Respondent trust account(s) which for the purpose of this Order shall include:

(i) the accounts relating to any estate, curatorship, trust or company, referred to in paragraph 2.6 hereof;

(ii) any and all banking accounts opened and kept by the Respondent (or on the Respondent's behalf) in terms of any provision contained in the Act or any of the Acts referred to in paragraph 12.4 above.

(e) Subject to the approval of the Board of Control of the Fund (the Board), to sign and endorse cheques, and/or I withdrawal forms and generally to operate upon the said trust accounts, but only to such extent and for such purposes as may be necessary to bring completion to current instructions in which the Respondent was acting as at the date of his suspension;

(f) Subject to the approval of the Board, to recover and receive and, if necessary in the interest of persons having lawful claims upon the said trust accounts and/or invested by the Respondent in respect of monies held, received and/or invested by the Respondent in terms of section 86(2) and 86(3) of the Act (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 in which the Respondent may have been concerned and which may have been wrongfully and unlawfully paid from the said trust accounts and to receive such monies and to pay same to the credit of the said trust accounts;

(g) To ascertain from the Respondent's records the names of all persons on whose account the Respondent appears to hold or to have received trust monies (trust creditors);

(h) To call upon such trust creditors to furnish proof, information and/or affidavits as she may require to enable her, acting in consultation with and subject to the requirements of the board, to determine whether any such trust creditors have a claim in respect of money in the said accounts, and if so, the amount of such claim;

(i) Subject to the approval of the Board, to admit or reject in whole or in part, the claims of any such trust creditors without prejudice to such trust creditor's right to access to the civil courts;

(j) Subject to the approval of the Board, to pay such claims as she may consider lawfully due;

(k) In the event of there being any surplus in the said trust accounts after payment of such claims, 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 the Act in respect of any interest therein referred to and, secondly without prejudice to the rights of the Respondent's creditors, the costs, fees and expenses, or such portion thereof as has not already been separately paid by the Respondent 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 to the Fund;

(l) In the event of there being insufficient trust monies in the said accounts to pay in full the claims the claims of the trust creditors as reflected in the records of the Respondent:

(i) Subject to the approval of the Board, to close the said accounts and to pay the credit balances therein to the Fund and to require such credit balances therein to be placed to the credit of a special suspense account in the name of the Respondent in the Fund's books;

(ii) To refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the Act;

(iii) To authorise the Board to credit the credit balances referred to above to its "*paid claims account*" when the Funds has paid, in terms of Section 55 of the Act, admitted claims of the trust creditors of the Respondent in excess of such credit balances, provided that, notwithstanding the foregoing, the Board in its discretion shall be entitled to transfer to its "*paid claims account*" the amounts of any claims as and when admitted and paid by it.

(m) Subject to the approval of the chairperson of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and and/or any such other person where considered necessary to assist her in carrying out of her duties as *curator bonis*;

(n) To render from time to time returns to the Board showing how the said accounts have been dealt with until such time as the Board notifies her that she may regard her duties as *curator bonis* as discharged.

12.7 The Respondent 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 Respondent in respect of his practice, and should 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;

12.8 A bill of costs drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court (who is authorised to do so) *mutatis mutandis* as if the Curator and the responsible officials of the Applicant in discharging their duties as contemplated in this order had acted as attorneys, shall constitute proof of their reasonable fees and disbursements ("the Curatorship fees and disbursements") and that the Registrar be authorised to issue a writ of execution for payment thereof by the Respondent;

12.9 The Curatorship will terminate when the Curator receives a final written discharge from such duties from the Board consequent upon the Curator filing with the Board a final report and account, together with supporting vouchers, in respect of the execution of the Curator's duties in terms of this Order.

12.10 The Respondent be and is hereby directed:

(a) to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the Respondents;

(b) to pay the Curatorship fees and disbursements;

(c) to pay the expenses relating to the publication of this order or an abbreviated version thereof.

12.11 The Respondent be and is hereby removed from office as –

(a) Executor of any estate of which Respondent has been appointed in terms of section 14(1) read with section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1) thereof;

(b) 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, No 66 of 1965;

(c) trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

(d) liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 71 of 2008;

(e) trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

(f) liquidator of any close corporation appointed in terms of section 74 of the Close Corporations Act, No 69 of 1984;

(g) administrator appointed in terms of section 74 of the Magistrates' Court Act, No 32 of 1944.

12.12 That the Respondent is ordered to pay the costs of this application, including the costs occasioned by the employment of Counsel.

12.13 The Respondent shall not be entitled to any fee, reward or reimbursement in respect of legal services rendered during his period of suspension in terms of section 93(8)(c) of the Act.

12.14 The orders in paragraphs 12.1 to 12.9, 12.11 and 12.13 above shall operate as interim orders with immediate effect, pending the return date.

S. NAIDOO, J

On behalf of Plaintiff:	Adv. MS Mazibuko
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