

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:25149/2021

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: YES/NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

Date: 17 August 2023

E van der Schyff

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

NTYATYAMBOZOMZI NOMINCIL MENSAH

RESPONDENT

JUDGMENT

Van der Schyff J

- [1] The applicant approached the court to suspend the respondent from practice as a legal practitioner, alternatively to remove the respondent's name from the roll of legal practitioners. Since the respondent complied with the applicant's outstanding

requirements, the applicant only seeks an order for costs on the scale between attorney and client.

- [2] The applicant submits that it is the *custos morum* of the profession, and it should not be necessary to carry any costs in litigation of this nature.
- [3] The respondent appeared in person. She submits that it would be unfair to burden her with costs. She explains that although she set up practice on 1 August 2014 and opened a bank account, she never utilised the trust account. After realising the difficulty of starting a practice, she sought employment elsewhere. She was gainfully employed since 1 October 2014, and the private practice was dormant. She was summoned to a disciplinary hearing by the Law Society of the Northern Provinces in November 2017. She explained the situation and advised the Law Society that she had closed the practice.
- [4] The respondent attached the letter from the Law Society following the disciplinary meeting. The Law Society informed the respondent that the Disciplinary Committee deliberated the following:
- ‘That the member be provided an opportunity to comply with the requirements of Rule(s) 35.22, read with Rules 35.23 and 35.19 of the Rules for the Attorneys’ Profession, and the provisions of section 41(1) and 41(2) of the Attorneys Act; and
- That the member must submit all outstanding audit reports and update all outstanding Fidelity Fund Certificates on or before the 31st of October 2018; and
- That failure to comply with the above-mentioned, the matter be referred to council in terms of the provisions of Rule 50.18.2 of the Rules for the Attorneys’ Profession, for your immediate suspension from the role of attorneys.’(sic)
- [5] In May 2018, she received correspondence from the applicant and was again threatened with disciplinary action if she failed to furnish a closing report. She avers

that she attended the applicant's offices and was advised that since there were no transactions to be audited, she only had to pay the closing audit fees for closure.

- [6] She paid the closing audit fees and closed the trust account. She submitted the bank statements and proof of payment to the applicant. The respondent was shocked when she received the application for her striking. She attempted to resolve the matter but was not adequately assisted. She concedes that the error on her part was not removing her name from the roll of practising attorneys.
- [7] In reply, the applicant submits that the submissions made by the respondent demonstrate her ignorance and lack of appreciation of the regulatory framework for legal practices. The applicant confirms that even if the respondent intended to remove her name from the roll of practising attorneys, she was still required to file a closing audit report.
- [8] The papers filed of record indicate that the respondent communicated her position to the applicant. However, she failed to follow the prescribed manner of closing her practice and enrolling her name on the roll of non-practising attorneys.
- [9] In an email dated 17 October 2019, the applicant's officials informed the respondent that she had to provide proof of closure of the trust account from the bank confirming the date the account was closed and the originally signed (not emailed) application for exemption.
- [10] There is no indication on the papers when the respondent filed the originally signed application for exemption. We agree with the applicant that the respondent should have known that her failure to comply with the regulatory framework would result in an application of this nature against her.
- [11] Although we accept that the respondent was not dishonest and did not misappropriate any trust funds, her failure to follow the prescripts pertaining to the closure of her practice to the letter resulted in this application. The applicant, as the disciplinary body of the profession, cannot be expected to accept any documents

from any of its members unless it is in the prescribed form. As a result, the respondent is liable for the costs of this application.

- [12] The fact that the applicant acts as the *custos morum* of the profession and not in its own interest renders applications of this nature *sui generis*. It was held by the court in *Prokureursorde van Transvaal v Kleynhans*¹ that it is appropriate that the applicant, who performs a public service, should not bear any part of the costs of the application. For this reason, it is justified that a costs order on attorney and client scale is granted.

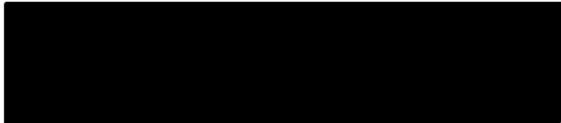
ORDER

In the result, the following order is granted:

1. The matter is removed from the roll;
2. The respondent is to pay the costs of this application on the scale as between attorney and client, such costs to include the costs of 3 August 2023.


E van der Schyff
Judge of the High Court

I agree


P Manyathi
Acting Judge of the High Court

¹ 1995 (1) SA 839 (T) at 865 E. See also *Prokureursorde van Transvaal v Landsaat* 1993 (4) SA 807 (T).

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

For the applicant:

Ms. M. Moolman

Instructed by:

DAMONS MAGARDIE RICHARDSON ATTORNEYS

The respondent:

In person

Date of the hearing:

3 August 2023

Date of judgment:

17 August 2023