

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 18628/2022

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED: ✓



...15...SEPTEMBER 2023
 DATE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

And

MARTINS MATLAKALA SEBUENG

Respondent

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
 CIRCULATED TO THE PARTIES BY WAY OF E- MAIL / UPLOADING ON
 CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 15
 SEPTEMBER 2023

PRETORIUS J:

1. INTRODUCTION:

1.1 This is an application for the suspension of the respondent from practice as a legal practitioner, alternatively for striking off the respondent from the roll of practitioners. The applicable legal principles will not be dealt with in detail as the legal principles are trite in applications of this nature. This application is not opposed by the respondent, although the respondent entered a notice to oppose the application. No answering affidavit was filed by the respondent and there was no appearance on behalf of the respondent.

1.2 There is no *lis* between the applicant and the respondent. The applicant, acting as *curator morum* of the attorneys' profession, places facts before the Court to enable the Court to decide whether an errant attorney should be suspended to practise as an attorney or whether his name must be removed from the roll of attorneys.

1.3 It is trite that a three stage enquiry by the Court must take place to decide whether the offending conduct of the respondent has been established on a balance of probabilities. The Court has to decide whether the respondent is a fit and proper person to practise as an attorney and has to apply the provisions of the Legal Practice Council Act, ("LPA"), the repealed Attorneys' Act No 53 of 1979 ("Attorneys Act"), the South African Legal Practice Council Rules (formerly the Law Society's Rules and the Rules for the attorneys' profession), the Code of Conduct and the common law.

1.4 The first stage is to decide whether the offending conduct has been established on a balance of probabilities. The second is to determine whether the conduct of

the respondent is of such a nature that he is no longer a fit and proper person to practise as an attorney if his conduct is compared to that of what is expected from an attorney. The third stage is to determine whether the respondent should be removed from the roll of practitioners, or whether an order for suspension for a period of time will suffice if all the circumstances are taken into consideration.

2. THE RESPONDENT:

The respondent was admitted and enrolled as an attorney in this Court on 13 December 2013. He practices as a legal practitioner for his own account as a director/partner at Sebueng Attorneys, 62 Taaifontein Street, Montana. The respondent is still on the roll of legal practitioners of this Court.

3. SERVICE OF THE APPLICATION:

The applicant was unable to effect service of the notice of motion, as well as the founding affidavit together with annexures, on the respondent. An application for substituted service was launched and an order granted by the Court to serve the application by publication, e-mail and sms message. The Court order was complied with, as ordered, and service took place in the manner the Court had prescribed. On 17 May 2023 the notice of setdown of the application was served on the respondent.

4. THE APPLICATION:

- 4.1** The respondent is currently practicing as an attorney without being in possession of a fidelity fund certificate and has been doing so since January 2020. He was not issued with a fidelity fund certificate as from 1 January 2021.
- 4.2** The respondent failed to submit his auditor's reports for the financial period ending February 2020 to the Legal Practice Council.

- 4.3 The respondent has failed to ensure that the amount of money in his trust banking account, trust investment account and trust cash account is not less than the amount of trust creditors. **Rule 54.14.8 LPC Rules.**
- 4.4 The respondent failed to immediately report in writing to the Council that the total amount of money in his trust account, trust investment account and trust cash account was less than the total amount of credit balances of the trust creditors. **Rule 54.14.10. LPC Rules.**
- 4.5 The respondent failed to maintain accounting records as required. **Rule 54.6, LPC Rules.**
- 4.6 The respondent failed to act with honesty and integrity. **Clause 3.1 of Code of Conduct.**
- 4.7 The respondent failed to ensure that no withdrawals from the trust banking account of the firm may be made by way of cellular or telephone transactions. **Rules 54.14, 15.3 of the LPC Rules.** Therefor the respondent had contravened several provisions of the Attorney's Act, the LPA, the Law Society Rules, the Rules for the Attorneys' Profession, the Rules of the South African Legal Practice Council and the Code of Conduct.

5. SUSPENSION:

- 5.1 The respondent has been practising without a Fidelity Fund Certificate since 2020. He was not issued with such as he had not submitted an audit report within six months of the annual closing of the accounting records of the firm for the year ending February 2020 and has not done so up to today.
- 5.2 The purpose of a Fidelity Fund Certificate is to afford the public protection against pecuniary loss due to possible misappropriation of trust funds.
- 5.3 Section 84.1 of the LPA is peremptory and provides that every practising attorney who practises for his own account must be in possession of a Fidelity Fund Certificate. The conduct of the respondent, by practising without a Fidelity Fund Certificate, places the public at serious risk.

5.4 It is clear that the respondent's conduct is such that he is no longer a fit and proper person to continue practising as an attorney. The Court is of the opinion that, in this instance, the conduct of the respondent does not warrant the removal of the respondent's name from the roll of attorneys. The Court finds that the applicant has proven, on a balance of probabilities, that the respondent should be suspended from practice.

6. COSTS:

It is so that there is no link between the applicant and the respondent. Therefore the applicant is entitled to costs as between attorney and client.

In the result the following order is made:

The order marked "X" is made an order of Court.



JUDGE C PRETORIUS

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I concur



JUDGE MP KUMALO

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing:

29 August 2023

Date of Judgement:

15 September 2023

Appearances:

Applicant counsel: Adv Dawid Smith

Respondent's counsel: Unopposed