

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 7188/2017,229/2019,2315/2019,2307/2019

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE <u>25/7/22</u> SIGNATURE: 	

In the matter between:

MOKGADI FLORA MOKGAHA

PLAINTIFF

JOHN GEORGE MAHLADISA

PLAINTIFF

YVETTE MASINDZ TAUYATSOALA

PLAINTIFF

SELEKA RICHARD

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

KGANYAGO J

- [1] The four matters were set down for trial for the 16th May 2022. The plaintiffs' attorneys of record in all the four matters is Kwata attorneys. In all the four matters, the plaintiffs' attorneys had filed the reports of Dr Malaka the industrial psychologist as one of their expert witness. The plaintiffs' attorneys have further filed the expert affidavits duly signed and commissioned allegedly by Dr Malaka. However, the signatures on all the four expert affidavits were not similar. On the date of hearing counsel for the plaintiffs in all the four matters could not give clarity as to whether it was Dr Malaka who had signed those expert affidavits. The four matters were postponed for Dr Malaka to come and verify whether indeed it was his signatures that appeared on those expert affidavits.
- [2] The four matters came back before court on 18th July 2022 wherein Dr Malaka testified under oath. He denied that the signatures that appears on the four affidavits were his, and further stated that he had no knowledge of the four affidavits. That he had terminated his relationship with other employees where he previously practiced during 2018. That the report that he had compiled is that of Mokgadi Flora Mokgaha under case no 7188/17, whilst for the other three matters the reports were not compiled by him. He further testified that even though the reports under case no 2307/19 and 229/2019 purports to be compiled by him and also bears his electronic signatures, they were not compiled by him. Further that the electronic signatures on those reports were used without his consent. Further that both reports were compiled on 12th August 2020, long after he had terminated his relationship with those employees at 10 Bendigo Avenue, Selcourt, Springs.

[3] In addressing court, counsel for the plaintiffs conceded that things were not done properly. That the instructing attorney only picked up these discrepancies after they were raised by the court. That they were not aware that the reports were not that of Dr Malaka, and that in an endeavour to rectify that, they have engaged the services of another industrial psychologist, and that his reports will be filed in court soon. They are therefore applying that the matters be removed from the roll to enable them to file the proper reports.

[4] A legal practitioner being an officer of the court is expected to act with integrity, reliability and honesty at all times. The duties of an attorney were summarised by Kirk-Cohen J in *Law Society, Transvaal v Mathews*¹ as follows:

“The attorney is a person from whom the highest standard are exacted by the profession and this court. If an attorney wishes to digress from that standards he may do so but he must first cast aside his profession by resigning and then pursue his chosen course. He cannot serve two masters. In this regard the standards are admirably dealt with in the founding affidavit as follows:

‘An attorney is a professional man whose independence and freedom in the conduct of his practise are recognised and preserved. Within the limits of the law and the rules of professional conduct an attorney conducts, and in fact should so conduct, his practice with a high degree of independence. The profession itself is not a mere calling or occupation by which a person earns his living. An attorney is a member of a learned, respected and honourable profession and, by entering it, he pledges himself with total and unquestionable integrity to the society at large, to the courts and profession ... only the very highest standard of conduct and repute and good faith are consistent with the membership of the profession which can indeed only function effectively if it inspires the unconditional confidence and trust of the public. The image and standing of the profession are judged by the conduct and reputation of all its members and, to

¹ 1989 (4) SA 389 (T) at 395F – 396B

maintain this confidence and trust, all members of the profession must exhibit the qualities set out above at all times.

The attorneys' profession can only fulfil its obligations to the community and comply with this role in the administration of justice in the land if it inspires and maintains the unconditional confidence of the community and if its members devote their absolute integrity to the conduct of their profession and to the fulfilment of all the requirements demanded of the profession and its members. The integrity of an attorney should inter alia manifest itself in a situation where he must prefer the interest of his client above his own. It is required of an attorney that he observes scrupulously, and complies with the provisions of the Attorneys Act and rules."

- [5] When these matters were adjourned for doctor Malaka to come and appear physically in court, the court was only concerned about the signatures on the expert affidavits of doctor Malaka which looked suspicious. However, when doctor Malaka appeared in court, he disavowed not only the expert affidavits as his, but went further to dispute two of the expert reports filed by the plaintiffs' attorney as been compiled by him. That makes this matter to be more serious that court initially thought.
- [6] Counsel for the plaintiffs' argued before court that they were under the impression that doctor Malaka was the one who had compiled those reports, and that they only realised that after this court raised the issue of the suspicious expert affidavits, and that they have since compiled new proper reports. However, that does not make sense at all. The plaintiffs on their own would not have known doctor Malaka. It will be the attorney or any person delegated by the attorney who handles those matters who will make an appointment with the expert. When the appointment is made, the attorney will be told the date, time, place and expert whom his/her client is to meet. In most cases the attorney or any person delegated by the attorney will personally transport their client to the

place of the expert. The attorney when he wants to file an expert affidavit, he/she will prepare it and communicate with the expert regarding the signing and commissioning of that expert affidavit.

- [7] The reports under case number 2307/2019 and 229/2019 were compiled on 12th August 2020 allegedly by doctor Malaka. However, doctor Malaka disputed those two reports as his, and also the four expert affidavits in the four matters as his. On 16th March 2022, the plaintiffs' counsel wanted to obtain default orders on the basis that the two reports were compiled by doctor Malaka, and also that doctor Malaka was the one who had signed and commissioned the four expert affidavits, whilst in reality that was not the case. Counsel for the plaintiffs only gave an explanation about the expert reports, and has failed to explain who had fraudulently signed and commissioned the expert affidavits. Doctor Malaka was not challenged when he disputed the four expert affidavits as his.
- [8] Even though legal practitioners are required to put the interest of their clients above theirs, in achieving that they must not at any stage try to deceive the courts. They are expected to act in a trustworthy and reputable manner at all times. In *Vassen v Law Society of the Cape of Good Hope*² Eksteen JA held that the profession of an attorney, as other officer of court, is an honourable profession which demands complete honesty, reliability and integrity from its members. For the courts to function properly, it relies on legal practitioners when appearing in courts to act in a reliable and honest manner.

² 1998 (4) SA 532 (SCA) at 538G

- [9] In the Judiciary Annual Report for 2017/18 it was reported that there is a prevalence of fraudulent activities relating to court orders on both superior and magistrates' courts. Further that this is a serious threat to access to justice and undermines the very integrity of the judicial system and the public confidence in the courts. It seems now that the problem of fraudulent activities might have escalated to expert reports, even though this court has not determined to what extent. If this practice is allowed to continue, that will affect the credibility of the orders that the courts grants in cases where experts reports are involved. To eradicate these types of conduct and behaviour, it must be dealt with harshly whenever it is discovered.
- [10] In the four matters before court, there are serious issues which goes into the integrity, reputation, reliability and honesty of the of the legal practitioners who represent the plaintiffs. Since doctor Malaka has disputed the two expert reports and the four expert affidavits filed his, it is clear that they were generated fraudulently. However, for fairness purposes, that will need to be properly investigated to determine who was responsible for generating and filing of the fraudulent expert affidavits and reports, and whether it was done deliberately, and intended to deceive the courts in obtaining the orders they were seeking. It is the duty of the Legal Practice Council to initiate such an investigation. At this stage this court could not detect anything to doubt the validity of the claims. However, that does not absolve the defendant to conduct its own investigation should it have doubts in these matters. The plaintiffs' attorneys are at liberty to file genuine expert reports and expert affidavits, and proceed to reinstate the matters for trial should they so wish.
- [11] In the result I make the following order:

11.1 The four matters under case numbers 2307/2019, 2315/2019, 229/2019 and 7188/2017 are removed from the roll.

11.2 No order as to costs.

11.3 Copy of this judgment to be sent to the Legal Practice Council for their attention.



KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

For the plaintiffs	: Kwata Attorneys
For the defendants	: In default
Date heard	: 18th July 2022
Electronically circulated on	: 25th July 2022