



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

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

16/09/22

DATE

[Signature]

SIGNATURE

**CASE NO: 10991/21**

In the matter between:

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

Applicant

and

**ADVOCATE MALESELA DANIEL TEFFO**

Respondent

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**JUDGMENT**

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**BOKAKO AJ**

## **INTRODUCTION**

1. The Applicant is the South African Legal Practice Council ("The LPC") exercising its powers as the statutory regulatory body regulating the professional conduct of legal practitioners in the Republic.
2. The LPC seeks an order to have the Respondent struck from the roll of legal practitioners, alternatively that he be suspended from practice until such time as he satisfies the court that he is a fit and proper person to practice as such.
3. The application is brought in accordance with the disciplinary procedures to adjudicate over his conduct which is alleged to be unprofessional, dishonourable or unworthy as provided for in section 44(1) of the Legal Practice Act No 28 of 2014 ("the LPA").
4. The decision taken by the LPC to launch an application for the striking –off, alternatively, suspension has its genesis in a number of complaints which it received against the respondent, as well as other irregularities concerning his practice. After receiving these complaints, the LPC informed the respondent about these complaints and he replied thereto by filing an answering affidavit.
5. The purpose of this application, the LPC contends that actions of the Respondent constitute deviation from the standards of professional conduct that the Respondent is not a fit and proper person to continue to practice as an advocate.

6. The facts that inform this application are as set out in the Founding Affidavit as well as the supplementary affidavits. The respondent then filed his answering affidavit. Subsequently, the Applicant filed a second supplementary affidavit which was not accompanied by any condonation application. Upon hearing submissions from both parties, the Court accepted the affidavit on the premise that it is in the interest of justice to dispose of this matter and to consider the representations made by both parties.

### **BACKGROUND FACTS**

7. The salient facts in this matter are summarized as follows: The Respondent is Advocate Malesela Daniel Teffo, he was admitted as an advocate of this court on the 5<sup>th</sup> of January 2009. The Respondent's name is still on the roll of practising Legal Practitioners and is currently practising as a referral advocate for his own account at 529, Protea Tower Chambers, 246 Paul Kruger Street, Pretoria.
8. The Applicant contends that the Respondent is guilty of unprofessional, dishonourable or unworthy conduct on the part of a legal practitioner in that he contravened various rules of the legal profession, the Legal Practice Act, the Code of Conduct, and the Rules of the LPC.
9. According to the Applicant, the facts and circumstances which prompted this application are the following complaints against the Respondent, in that:

10. The Respondent placed a matter on an unopposed roll to secure a default judgment knowing fully well that the matter was in fact opposed, and had been removed from the unopposed roll on the 10<sup>th</sup> of June 2020.
11. The Respondent assaulted and intimidated member of the SAPS, which resulted in an urgent interdict application to prohibit the Respondent from entering the SAPS and State attorney buildings, and further, the Respondent was interdicted from intimidating, threatening, victimising and harassing SAPS and State attorney personnel.
12. The Respondent is being investigated for corruption activities as defined in the Prevention and Combating of Corrupt Activity Act No. 12 of 20.
13. The Respondent misled the Labour Court by handing a copy of Regulation 15 of the SAPS 2006 Disciplinary regulations which differed from the copy submitted by opposing counsel. The Judge hearing the matter confirmed the version of the copy submitted by the opposing counsel.
14. The Respondent contravened Section 37(2)(a) of the LPA in that he failed to cooperate with the LPC investigations against him. The Respondent failed to reply to correspondence sent to him by the LPC.
15. The Respondent breached a court order handed down by Madam Justice Fischer on 4 October 2019 by threatening Colonel Smit, and was consequently, arrested and released on bail.



16. The Respondent consulted with clients without acceptance of a brief from an attorney, instead, he accepted instructions directly from clients, thus contravening Section 34(2)(a)(i) and paragraph 27.2 of the LPC's code of conduct.
17. The Respondent accepted payments directly from clients without receipt of a brief from an attorney, thus contravening paragraph 27.4 of the LPC's code of conduct.
18. The Respondent utilised Attorneys, David Stevens Nthite and K. Masemola's details without their consent. Respondent's unprofessional, dishonourable and unworthy conduct in more detail is described below:

#### ALLEGED OFFENCES COMMITTED BY RESPONDENT

##### Complaints from the South African Police Service

19. On the 17<sup>th</sup> October 2019, the Applicant received a complaint from the Provincial Commission of the South African Police Service which requested the Applicant to embark upon an urgent investigation into the Respondent's conduct. A copy of the complaint, together with its annexures were sent to the Respondent.
20. The complaint outlines that on the 27<sup>th</sup> of September 2019, Judge Moosa ordered that the Respondent's conduct should be reported to the Legal Practice Council as a matter of urgency, following that, on the 4<sup>th</sup> of October 2019 Judge Fisher granted an urgent interdict against the Respondent in the South Gauteng High Court on behalf of the SAPS and the State Attorney of Johannesburg.

Incident on 20 August 2019 at the Johannesburg Labour Court

21. On the 20<sup>th</sup> of August 2019, Ms Sindi Manitshana from the State Attorney's Office in Johannesburg was in the Labour Court attending to a matter where she discovered that one of her matters that she was handling on behalf of the SAPS (AJ Baloyi v Minister of Police), was on the unopposed roll before Judge Rabkin-Naicker. The Respondent informed Ms Manitshana that it was a State Attorney Pretoria matter. The Respondent further made submissions to the Court that there was an agreement between the parties that the matter would proceed unopposed. Ms Manitshana to her dismay requested the Court to stand matter down due to the fact that she could not fathom how this matter, which has been removed from the opposed roll by Judge Molahlehi on 10 June 2019, was now again on the unopposed roll before the Judge Rabkin-Naicker. Ms Manitshana perused the Court file and discovered that the notice to oppose by the office of the Johannesburg State Attorney as well as the answering affidavit by the SAPS had been removed from the Labour Court file. The form that was completed by Ms Thusi (Ms Manitshana's candidate attorney) was however still on the file. Ms Manitshana further uncovered that when the matter was removed from the unopposed roll-on 10 June 2019, the Respondent had served the papers at the Pretoria State Attorney on 13 June 2019 insisting that it was a State Attorney Pretoria matter.

22. This was clearly done with the intention of misleading the court and getting the matter back on the unopposed roll to secure a default judgement against the SAPS. Ms Manitshana went back to Court and brought this to the attention of the

Judge. The Judge ordered the Respondent and his attorney to file affidavits wherein they should explain how the matter got placed on the unopposed roll again.

23. The Respondent filed an affidavit on Monday, 23 September 2019 and Colonel Smit filed a replying affidavit on behalf of the SAPS. The affidavit by Col. Smit was served on the Respondent on the same day.

Incident on 25 September 2019 at the SAPS provincial office Park town: criminal case Hillbrow CAS 763/09/2019

24. On the 25<sup>th</sup> of September 2019 the Respondent attended at the offices of the SAPS Provincial office located at 16 Empire Rd, Parktown, Johannesburg to represent an ex-SAPS member at an arbitration hearing. Instead of going to the arbitration venue to wait for the arbitrator he first went to the office of Col. Smit where he confronted her about the affidavit that was filed in the Baloyi matter. He then went to the office of Brigadier Beukes, the head of labour litigation in order to confront her. Statements by Brig. Beukes and Col. Smit were referred to.

25. Following these unwarranted attacks, a criminal case of assault, crimen iniuria, trespassing and intimidation was immediately opened at the Hillbrow police station under case number 763/09/2019 and the Respondent was escorted from the building by uniformed police officials. From the information which the Applicant has received, the aforementioned conduct does not constitute the only time that the SAPS and State Attorney personnel have been assaulted and harassed by the



Respondent. The decision was taken to launch an urgent application in the South Gauteng High Court where the SAPS sought the Honourable Court's intervention in granting an interdict against the Respondent which would prohibit him from entering the offices of the SAPS provincial office as well as the offices of the Johannesburg State Attorney coupled with ancillary relief that the Respondent would be interdicted from intimidating, threatening, victimising, harassing and making defamatory comments to and about the SAPS and State Attorney personnel.

#### Interim order granted by Judge Moosa on 27 September 2019

26. On the 27<sup>th</sup> of September 2019 the application by the SAPS and the Johannesburg State Attorney for an urgent court order was on the roll at the South Gauteng High Court. The Respondent was not present and Judge Moosa stood the matter down. When the Respondent eventually arrived at Court, he was dressed in casual attire wearing a pair of blue jeans and a leather jacket. The Respondent informed the court that he had not received the application the previous day and could therefore not prepare a response. During argument, the Respondent admitted that he was not registered with the Applicant (LPC). After the matter was adjudicated, the Respondent gave an undertaking which was made an order of Court. The court added further conditions which were encapsulated in the order. A copy of the order which is annexed to the complaint as annexure SAPS 5 reads as follows:

"Non-compliance with the rules of court were condoned and the matter was heard as urgent; the Respondent undertook not to enter into the offices of the provincial SAPS office and office of the State Attorney Johannesburg pending final determination of the application interdict against the Respondent,



The Respondent undertook not to threaten, harass, victimise, assault and/or made defamatory utterances towards or about the employees of the Applicant pending the final determination of the application or an interdict against the Respondent,

The Respondent shall not render legal services for remuneration pending registration with the Legal Practice Council,

The Respondent shall file his opposing papers by no later than close of business on Tuesday, 1 October 2019. The Applicant shall file his reply by no later than close of business 2 October 2019. The matter was set down as an urgent matter for hearing Thursday, 4 October 2019.

The court further emphasised that this matter is to be brought to the attention of the Legal Practice Council by the office of the State Attorney no later than close of business 30 September 2019”.

#### Interim order granted on 4 October 2019 by Judge Fischer

27. On the 4<sup>th</sup> of October 2019 Judge Fischer heard the interdict application. Judge Fischer asked the Respondent several times to give an undertaking that he would adhere to his earlier undertaking given on the 27<sup>th</sup> of September 2019.

28. He repeatedly refused to adhere to the undertaking and Judge Fischer said that she would then have to hear the application for the interdict as the allegations were serious and he was refusing to comply with the undertaking that was made an order of court by Judge Moosa on 27 September 2019. A copy of the Honourable

Judge Fischer's order is attached to the complaint as annexure SAPS 6 and reads as follows:

*"1. This matter heard on an urgent basis.*

*2. The Respondent is interdicted from entering the offices of the Provincial Office of the South African Police Service (SAPS) Gauteng situated at 16 Empire Rd, Parktown Johannesburg.*

*3. The Respondent is interdicted from threatening, harassing, victimising, assaulting and/or making any defamatory utterances in relation to the following employees of the office of the SAPS and the State Attorney namely:*

*3.1 Brig D Beukes,*

*3.2 Col S Smit,*

*3.3 Ms Maponya and*

*3.4 Ms S Manitshana.*

*4. Costs of the application to be paid by the Respondent (Teffo).*

*5. The interdict will operate on an interim basis pending the final determination of this matter.*

*6. The application is postponed sine die."*

Judge Fischer also recorded her concerns about the Respondent's attitude and the manner in which he conducted himself in Court.

#### The Respondent's version that was sent to the National Commissioner

29. The Respondent penned his version of events in a letter to the National Commissioner which was sent by email on 26 September 2019 at 17:34. In this

letter the Respondent admits that he went to the office of Col Smit to confront her about the contents of the affidavit that she had made in the AJ Baloyi matter.

30. The conduct of the Respondent in directly confronting the deponent of an affidavit is highly irregular of an advocate of the High Court where he accused her of being a racist. The Respondent further admitted that he went to the office of Brig Beukes. Furthermore, the contents of paragraph 37 of the Respondent's letter are alarming in that he admitted to receiving the urgent application to interdict him from entering the SAPS Provincial Office on 25 September 2019 at 14:00PM. Furthermore, in paragraph 42 the Respondent even quotes the Court reference as being 33917/2019. In paragraph 43 the Respondent states that he will not waste his time going to Court because the judge will automatically dismiss the application.

31. On the 27<sup>th</sup> of September 2019 he did not appear in Court. As delineated *supra*, the Respondent later appeared in Court dressed in casual attire and told the Honourable Judge Moosa that he did not receive the application. This conduct cannot be countenanced and can only be seen as an attempt to mislead the Court intentionally.

#### Fraud and corruption: Hillbrow case number 212/04/2015

32. The letter received from the SAPS further detailed that a criminal investigation is currently with the Director of Public Prosecutions South Gauteng pending a decision on prosecution. It is alleged that the Respondent and ex-Captain Adoons were working together in order to manipulate the outcome of labour-related



appeals and arbitration proceedings against receipt of payment or benefit as defined in the Prevention and Combating of Corrupt Activities Act 12 of 2004.

33. The docket was investigated by the Directorate Priority Crimes Investigation ("the Hawks") with the assistance of a private auditing firm appointed by the SAPS.

Incident on 18 September 2015: complaint by Advocate SH Chabalala

34. On 18 September 2015, the Respondent disrupted a disciplinary hearing and insulted the employer representatives. The chairperson moved the hearing to another venue. The Respondent was recused from representing his client due to contemptuous and unbecoming behaviour. On 2015-09-11 the employee was afforded an opportunity to get a new legal representative, the case was rescheduled to the 18<sup>th</sup> of September 2015. The Respondent was aware of the fact that he was recused and was requested leave the trial room, as he was no longer needed, he strongly refused to such an extent two police officers were requested to come and remove the Respondent. The Respondent was disrespectful, furious, fuming with insults.

Incident 14 December 2015: complaint Lt-Col Falk

35. On 14 December 2015, the Respondent disrupted a disciplinary hearing, seized the recording device by force from the chairperson and threatened to hit the chairperson of the disciplinary hearing. A criminal case was opened at the Pretoria Central police station under case number 985/12/2015 and the complaint of Lt-Col Falk was sent to the Respondent.

### Incident on 23 March 2016 and the Johannesburg Labour Court

36. On the 23<sup>rd</sup> of March 2016 during proceedings before the honourable Judge Steenkamp in the Johannesburg Labour Court, the Respondent handed up a copy of regulation 15 of the SAPS 2006 disciplinary regulations which differed from the copy submitted by Counsel on behalf of the SAPS. On the copy handed up by the Respondent regulation 15 (1) (e) had been changed to regulation 15(1)(f) the Respondent argued that his client, AJ Baloyi had been sanctioned to a suspended dismissal not dismissal. The Judge stood the matter down to assess the government Gazette himself. The Judge confirmed that the version submitted by Counsel for the SAPS was in fact that the correct document. This has been delineated in paragraph 4 of the judgement with case number J499/16.

### Complaint lodged against the Respondent and S Mokono attorneys by Major

#### General Basson

37. On 10 August 2017 Major General Basson (the previous Deputy Provincial Commissioner responsible for personnel services) lodged a complaint against the Respondent and SM Mokono attorneys after defamatory letters were sent to her. This has been under investigation by the Legal Practice Council. The aforementioned complaint from the SAPS was sent by the Applicant to the Respondent on the 30<sup>th</sup> of October 2019. The Respondent was requested to provide a response thereto, however, no response was forthcoming. On the 12<sup>th</sup> of March 2020 in this letter, the Respondent was advised that if he does not provide the answer to the initial correspondence within 14 days, the Respondent's conduct would be referred to an investigation committee for consideration.

38. LDA attorneys came on record as the attorneys for the SAPS and requested an update on what had transpired since their client had sent through the complaint to the SAPS. The Applicant responded by email on 6 August 2020 and provided LDA attorneys with the correspondence which had been sent to the Respondent demanding a response.

39. LDA attorneys responded to this email via an e-mail of their own on 11 August 2020 wherein they provided the Legal Practice Council with an update. The attorneys advised the Applicant that the Respondent had breached the Court order which had interdicted him from going near the SAPS and its officials by entering the premises at 16 Empire Rd, Parktown on 22 July 2020 and again threatened Col Smit. The Respondent was arrested and detained at SAPS Hillbrow. The Respondent was released on bail and the bail conditions were set out in a Court order.

40. The Applicant was advised that post the Respondent's release on bail on the 24<sup>th</sup> of July 2020 the Respondent was ordered to appear in Court on the 4<sup>th</sup> of September 2020. However, the attorneys representing the SAPS informed the offices of the Applicant that the Respondent again breached his bail conditions by attending at the offices of the SAPS on 9 November 2020. The Respondent's habitual and repeated noncompliance with Court orders and dangerous conduct warrants his urgent suspension.



### Complaint by Thembelani Khambule

41. Interrelated to the aforementioned is a complaint lodged by Thembelani Khambule, in that on the 4<sup>th</sup> of June 2020. Khambule and three other colleagues were dismissed from the SAPS for alleged misconduct and were subsequently reinstated by the Safety and Security Sectorial Bargaining Council to resume their respective contractual obligations on 2 December 2019 as per the arbitration award dated 31 October 2019. When Khambule and his colleagues reported for duty on 2 December 2020 they were advised to stay at home as the SAPS was weighing up its options with regards to the arbitration award. Such considerations by the employer could possibly include approaching the Labour Court to review the arbitration award.

42. Khambule and his colleagues contacted the union representatives who referred them to the Respondent and advised that he would assist them with an application in the Labour Court to enforce the arbitration award. After meeting with the Respondent, in person, and without a briefing attorney or a brief, the Respondent made them sign contingency fee agreements and affidavits. Shortly thereafter on the 10<sup>th</sup> of January 2020 a colleague of Khambule's received a call in his presence from advocate Thilivhali of the Directorate for Priority Crime Investigation Unit who advised them that they could celebrate as they were to return to duty on Monday, 13 January 2020. Khambule and his colleagues contacted the Respondent and advised him that due to the fact that the SAPS had reinstated them there was no longer a need to pursue the application in the Labour Court.

43. The Respondent requested Khambule and his colleagues to attend his offices and Khambule handed to the Respondent a letter which terminated his mandate and the contingency fee agreement. The Respondent advised them that they could not withdraw from the agreement. He then threatened them on various occasions. On the 27<sup>th</sup> of February 2020, the Respondent, as per his usual modus operandi, walked into Khambule's office unannounced and without prior warning in order to intimidate and threaten him. The Respondent stated to Khambule that he should not even think of withdrawing from the agreement and stated that 'there will be war,' Khambule asserted that the manner in which the Respondent conducted himself ignited a feeling of abuse and he and his colleagues approached the office of the Applicant to enquire about the Respondent's registration and membership status as a practising advocate. The Applicant provided Khambule with a letter confirming that the Respondent was practising as a referral advocate. Having regard to the fact that the Respondent is not a trust account advocate; his direct consultations with members of the public are unlawful together with the affidavits and contingency fee agreements.

44. The Respondent contravened the provisions of section 34(2)(a)(i) of the Legal Practice Act read with the provisions of paragraph 272 of the South African Legal Practice Council's Code of Conduct in that he consulted with clients on 6 and 9 December 2019 without the acceptance of the brief from an attorney and instead accepted a brief directly from clients. In furtherance of the above, the Respondent accepted payment directly from clients for purportedly rendering legal services without the receipt of a brief from an attorney.



45. On the 14<sup>th</sup> of March 2020 Khambule received a bill of costs from the Respondent wherein he demanded payment in the amount of R77,350.00 into his personal account. At the time, and without knowing that the Respondent was conducting himself illegally, Khambule decided to pay the Respondent an amount of R10,000.00 which he asserted, in his humble opinion, was sufficiently commensurate for the services rendered by the Respondent.

46. In contravention of paragraph 27.4 of the Legal Practice Council's Code of Conduct, on the 24<sup>th</sup> of March 2020, the Respondent sent an amended bill of costs which amounted to R109,081.00, for immediate payment into his personal account. Accordingly, the Respondent has sought to charge fees based on an unlawful contingency fee agreement entered into without the requisite brief from an attorney. This was unnecessary due to the reinstatement of the employees by the employer without the need to have an enforcement order of the arbitration award.

47. Furthermore, the Respondent contravened the provisions of paragraph 3.6 of the LPC's Code of Conduct in that he failed to maintain legal professional privilege and confidentiality regarding the affairs of present or former clients. When he had a dispute with his clients, he unlawfully disseminated clients' information and sent privileged email correspondence to the National Head and legal department of the DPCI as well as the unit commander of a DPCI unit on 14 April 2020. He sought to discredit Khambule and his fellow colleagues with their employer.

Complaint by the Respondent and the answer thereto



48. The Applicant submitted that, on the 29<sup>th</sup> of January 2020, after the urgent applications and the interdicts were granted against the Respondent, the Respondent sought to file his own complaints at the offices of the Applicant against the attorneys at the office of the State Attorney and the representatives of the SAPS. The three complaints were leveraged against attorney Hermina Maponya, Cindi Manitshana and advocate Sipho Mahlangu. The aforementioned was sent by the Applicant to Ms Maponya for comment. She responded on behalf of the parties mentioned in the Respondent's complaints on 5 March 2020, in that there was no merit to the Respondent's complaints. He merely makes wild and outrageous allegations without a shred of evidence to prove his assertions.
49. In similar vein the Respondent has filed with the Applicant, after this application was heard, a purported answering affidavit, full of outlandish allegations.
50. Another complaint was made by attorney Daniel Stevens Nthite. Nthite deposed to an affidavit wherein he confirmed that the Respondent had used his personal details and that of Nthite Attorneys without his consent. Despite repeated demands that the Respondent desist from doing so, those pleas fell on deaf ears.
51. On the 3<sup>rd</sup> of November 2020, the Applicant received a letter from the SAPS' attorneys of record. The letter sought to draw the Applicant's attention to the fact that on 2 September 2020 two "notices" together with attachments were allegedly served by the sheriff on the SAPS in respect of two pending matters. The notices which were served were apparently from the offices of Masemola K Attorneys. However, a perusal of these notices depicted the e-mail address and personal cell phone number of the Respondent. This was brought to the attention of Masemola

Attorneys by the SAPS' attorneys. Masemola Attorneys responded on the 22<sup>nd</sup> of September 2020 advising that they have no knowledge of the matter and distanced themselves from any legal proceedings against the SAPS. The only conclusion which can be drawn from the aforementioned is that the Respondent was fraudulently utilising the details of Masemola Attorneys without authorisation and consent.

52. On the 19<sup>th</sup> of September 2019, the SAPS prepared a supplementary complaint against the Respondent which delineated his conduct. This included the same details of 16 March 2020 in that the Respondent's conduct was in direct violation of the interdict granted. Furthermore, not only did the Respondent contravene the interdict by making defamatory utterances against Col Smit and Brig Beukes, he again; on 16 March 2020, attempted to gain access to the provincial building in violation of paragraph one of the interdict.

53. This was the second time the Respondent visited the offices of the provincial building after the honourable Judge Fischer granted the interdict. It was thus clear to the SAPS that the Respondent will not be prevented by court order from advancing his unfounded and unbecoming conduct. The transcript of the proceedings before Fischer J referred to was attached.

Phumudzo David Makhuvha

54. Phumudzo David Makhuvha ("Makhuvha") lodged a complaint with the Legal Practice Council on 25 February 2021. Makhuvha provided a statement outlining the ambit of his complaint against the Respondent. Makhuvha needed assistance



regarding a labour matter in 2009. He instructed the Respondent to challenge what he alleged was an unfair dismissal at the Labour Court. Makhuvha paid an amount of R 13,500.00 (THIRTEEN THOUSAND FIVE HUNDRED RAND) to the Respondent. Makhuvha stated that he called the Respondent every two weeks as instructed by the Respondent, however the Respondent would ignore his phone calls. Makhuvha was only able to reach the Respondent when he called him with different cell phone numbers. In December 2020, Makhuvha was informed by the Respondent that he will refer the matter to arbitration in January 2021. When Makhuvha followed up on the arbitration date, the Respondent sent him a message stating that he is terminating the mandate with immediate effect and that he will refund Makhuvha.

55. When Makhuvha called the Respondent on 23 February 2021, he was informed by the Respondent that he has left his personal documents at the Labour Court and that Makhuvha can collect them from there should he need them. Makhuvha has not received any communication from the Respondent regarding his refund or the return of his personal documentation to date.

#### Lebogang Emmanuel Ntamo

56. Lebogang Emmanuel Ntamo ("Ntamo") lodged a complaint with the Legal Practice Council on 3 June 2021. Ntamo provided a statement outlining the ambit of his complaint against the Respondent. A copy of this complaint is annexed hereto marked Annexure "SA3". Ntamo needed assistance regarding an unfair labour practice matter from 01 June 2020. Ntamo paid the Respondent an amount of R 4,500.00 (FOUR THOUSAND FIVE HUNDRED RAND). Subsequent to Ntamo



paying the Respondent, Ntamo has been unable to reach him regarding feedback on the matter. The Respondent has since not sent any correspondence to Ntamo.

Jacob Mokaele Rasegwete

57. Jacob Mokaele Rasegwete ("Rasegwete") lodged a complaint with the Legal Practice Council on 16 July 2021. Rasegwete provided a statement outlining his complaint against the Respondent. Rasegwete sought assistance from the Respondent on 02 February 2014 regarding an arbitration matter for his unfair dismissal. Rasegwete advised that he has not been informed of any progress of the matter, and when the Respondent was asked about it, he would say he is waiting for a date. When the matter was set down, Rasegwete was not informed of the date and the matter was dismissed due to non-attendance.

Moshabane Bernard Tladi

58. Moshabane Bernard Tladi ("Tladi") lodged a complaint with the Legal Practice Council on 29 July 2021. Tladi provided a statement outlining the ambit of his complaint against the Respondent. Tladi has trusted the Respondent for many years whilst he was employed by the SAPS, and they had a good relationship. Tladi sought the assistance of the Respondent as he had experience with the SAPS members being treated unfairly, unlawfully and unconstitutionally, therefore he was capable of handling Tladi's case. The Respondent later blamed Tladi saying that he was not provided enough time to handle the matter. Tladi paid the Respondent an amount of R 4,500.00 (FOUR THOUSAND FIVE HUNDRED RAND) on the 29<sup>th</sup> of May 2020, after he was contacted to make a payment. A consultation was arranged for 07 September 2020, and when Tladi went to the Respondent's office, he promised to arrange another consultation but never did.

Tladi went to the Respondent's office on many occasions, and left messages with his secretary, and as well, written messages under the door, but the Respondent never bothered to contact or respond to his efforts and communication. Tladi's phone calls were also never answered. When Tladi requested a refund, he was told by the Respondent that it will never be paid back as he had a right to it.

#### Andrew Noko Malatsi

59. Andrew Noko Malatsi ("Malatsi") lodged a complaint with the Legal Practice Council on the 14<sup>th</sup> of August 2021. Malatsi provided a statement outlining the ambit of his complaint against the Respondent. During February 2020, Malatsi sought the assistance from the Respondent in lodging a review application and represent him at the labour court, as well as an arbitration. Malatsi paid an amount of R 35,000.00 (THIRTY-FIVE THOUSAND RAND) to the Respondent. The Respondent has not provided Malatsi with any results or a receipt for the monies received. The Respondent has been banned from all SAPS buildings; thus, he is not able to represent Malatsi at SSSBC. The Respondent requested Malatsi to pay an amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND) to get information, which he was privy to, and Malatsi was further given someone else's banking account details. The Respondent has been bragging about his education and saying that Malatsi will die poor and that he can take him to the Council.

#### Maduvhahafani Mamkwe

60. Maduvhahafani Mamkwe ("Mamkwe") lodged a complaint with the Legal Practice Council on 14 August 2021. Mamkwe provided a statement outlining his complaint against the Respondent. During February 2020, Mamkwe sought the assistance of the Respondent to represent him in a case at the SSSBC in order for him to



return to work, and paid an amount of R 35,000.00 (THIRTY-FIVE THOUSAND RAND) into the Respondent's banking account. The Respondent has not provided Mamkwe with any results or a receipt for the monies received. The Respondent has been banned from all SAPS buildings; thus, he is not able to represent Mamkwe at SSSBC, and the Respondent only attends to his own personal case of assault. The Respondent is fighting the SAPS using Mamkwe as a weapon, the Respondent called Mamkwe, his wife and kids, to attend Pretoria SAPS headquarters to picket and submit a memorandum. Whenever Mamkwe calls the Respondent for a progress report, he gives him irrelevant information to say that he is fighting the SAPS' management to remove them from their portfolios as they are corrupt and always engaging in fraudulent activities. The Respondent requested Mamkwe to pay an amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND) to get information, which he was privy to, and Mamkwe was further given someone else's banking account details. The Respondent has been bragging about his education and saying that Mamkwe will die poor and that he can take him to the Council.

#### Themba Patrick Mabena

61. Themba Patrick Mabena ("Mabena") lodged a complaint with the Legal Practice Council on 13 September 2021. Mabena provided a statement outlining his complaint against the Respondent, during February 2020, Mabena sought the assistance of the Respondent in lodging a review application and represent him in the Labour Court, as well as arbitrations, and paid an amount of R 27,000.00 (TWENTY-SEVEN THOUSAND RAND) into the Respondent's banking account. The Respondent has not provided Mabena with any results or a receipt for the monies received. The Respondent has been banned from all SAPS buildings; thus,



he is not able to represent Mabena at SSSBC, and only attends to his own cases of assault. The Respondent is fighting the SAPS using Mabena as a weapon, the Respondent called Mabena, his wife and kids, to attend Pretoria SAPS headquarters to picket and submit a memorandum. Whenever Mabena calls the Respondent for a progress report, he gives him irrelevant information to say that he is fighting the SAPS' management to remove them from their portfolios as they are corrupt and always engaging in fraudulent activities. The Respondent requested Mabena to pay an amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND) to get information, which he was privy to, and Mabena was further given someone else's banking account details. The Respondent has been bragging about his education and saying that Mabena will die poor and that he can take him to the Council.

#### Baile Brenda Motswenyane

62. Baile Brenda Motswenyane ("Motswenyane") lodged a complaint with the Legal Practice Council on 11 January 2022. Motswenyane provided a statement outlining her complaint against the Respondent. The Respondent is not Motswenyane's legal representative and he is allegedly representing some of the members of SAPS in various provinces. Motswenyane has never seen or engaged with the Respondent, either personally or professionally, however, he has been sending messages that are defamatory in nature and unfounded against her, as well as some of her management in the province.

63. The Respondent conducts himself in an unprofessional manner that is unbefitting to the legal profession. The Respondent is contravening the provisions of the LPC Code of Conduct and is failing to uphold the principles and values enshrined in the

Constitution by sending vulgar messages to the Provincial Commissioner of the SAPS in the Free State and its management.

64. The Respondent is contravening Item 3.14 and 3.15 of the Code of Conduct by failing to conduct himself with integrity, fairness, respect and without unfair discrimination when he sends demeaning and insulting messages about Motswenyane and SAPS Management. The Respondent's conduct of sending and distributing WhatsApp messages which are defamatory in nature and offensive, reflecting his name and contact number, are putting the legal profession in disrepute. Motswenyane requested the Legal Practice Council to ensure that the Respondent refrains from consistently and repeatedly harassing Motswenyane and the Provincial Management of the SAPS by sending demeaning, threatening and humiliating messages that create hostility amongst employees. It is not clear whether the Respondent is acting in his personal or professional capacity, or as a politician when representing his alleged client. The Respondent is making reckless averments and allegations which are unsubstantiated against Motswenyane as the Provincial Commissioner of the Free State and its Management.

Seanego Aubrey Kapa

65. Seanego Aubrey Kapa ("Kapa") lodged a complaint with the Legal Practice Council on 03 February 2022. Kapa provided a statement outlining his complaint against the Respondent. Kapa sought assistance from the Respondent on 12 May 2017, regarding a labour dispute matter. Kapa deposited an amount of R 30,000.00 (THIRTY THOUSAND RAND) on 11 November 2018 into the Respondent's trust banking account. The Respondent has failed to notify Kapa of his arbitration



hearing dates and has unilaterally appointed other legal practitioners of record in the matter without informing Kapa and in some documents, Kapa's signature has been forged by the Respondent. The Respondent has failed to communicate with Kapa and has subsequently blocked Kapa's cell phone number.

Deputy Judge President Ronald Sutherland on behalf of the Honourable

Justice Msimeki

66. Deputy Judge President Ronald Sutherland ("DPJ Sutherland"), on behalf of the Honourable Justice Msimeki lodged a complaint with the Legal Practice Council on 4 March 2022. DJP Sutherland provided a report on the Respondent's conduct as well as the Court record of the proceedings outlining the ambit of his complaint against the Respondent. "The Respondent has conducted himself in a disrespectful, unethical, unprofessional and contemptuous manner when addressing the Court by speaking out of turn and saying things such as "just listen to me I am talking", "I respect you as a judge, but I do not worship you", "you can go elsewhere and report me", "you are not a sober judge and we cannot continue with a Judge who is not sober minded." as well as accusing the judge of not being accountable and being biased. The Respondent has failed to show respect and act in an ethical and professional manner at all times during the Court proceedings and when addressing the Judge".

Majatladi Hosea Rakoma

67. Majatladi Hosea Rakoma ("Rakoma") lodged a complaint with the Legal Practice Council on 07 March 2022. Rakoma provided a statement outlining the ambit of his complaint against the Respondent. During 2018 — 2019, Rakoma sought the



assistance of the Respondent in assisting him with a labour matter. The Respondent did not account for any funds paid to him, and no receipts were provided on two payments made to him. Rakoma could not pay any further monies due to the distrust between himself and the Respondent.

#### Anna Mapaseka Mofokeng

68. Anna Mapaseka Mofokeng ("Mofokeng") lodged a complaint with the Legal Practice Council on 09 March 2022. Mofokeng provided a statement outlining the ambit of her complaint against the Respondent. During September 2021, Mofokeng requested the Respondent's assistance in representing her partner on a labour matter at work, and paid an amount of R 5,500.00 (Five Thousand Five Hundred Rand). Mofokeng personally spoke to the Respondent and he agreed to represent her partner, however he never showed up to represent her partner.

69. Mofokeng has been contacting the Respondent, and he has requested that she draft a termination of mandate and that he will refund her money, which he never did.

#### David Matiane Matlhoko

70. David Matiane Matlhoko ("Matlhoko") lodged a complaint with the Legal Practice Council on 06 April 2022. Matlhoko provided a statement outlining the ambit of his complaint against the Respondent. Matlhoko sought assistance from the Respondent in 2015, regarding a review application for his dismissal at the Labour Court. Matlhoko provided the Respondent with all the necessary documents for the review application and deposited an amount of R 92,500.00 (NINETY-TWO THOUSAND FIVE HUNDRED RAND) into the Respondent's trust account. The Respondent has failed to update Matlhoko with regards to his case, and he has

further failed to account for the monies paid to him and provide a statement of account for any work done on the matter. Upon attendance at the Respondent's chambers on or around 23 September 2021, Matlhoko found that the Respondent has moved chambers and was unable to uplift his file. Matlhoko sent the Respondent a SMS in December 2021, wherein he cancelled his mandate with the Respondent. From the year 2015 to 2021, the Respondent has continued to ignore Matlhoko's phone calls and correspondence. Matlhoko has subsequently approached new legal practitioners, who addressed a letter of demand to the Respondent and who tried to contact the Respondent on multiple occasions, to no avail.

71. The Applicant argued that the information which has come to the attention of the Applicant coupled with the Respondent's refusal to engage with the Applicant, it has been resolved that the Respondent's conduct no longer meets the requisite threshold of a fit and proper person and that this Court should consider the facts placed before it and suspend, alternatively strike the Respondent from practising as a legal practitioner. Continued to argue that the Applicant has afforded the Respondent with numerous opportunities to answer to the complaints however, no answers have been forthcoming, and the Respondent's conduct stands to be assessed in light of weight of evidence which has been provided to it by the office of the State Attorney and the attorneys of record that represent the South African Police Service.

72. The Respondent misled the Labour Court by handing a copy of Regulation 15 of the SAPS 2006 Disciplinary regulations which differed from the copy submitted by



opposing counsel. The Judge hearing the matter confirmed the version of the copy submitted by the opposing counsel.

73. The Respondent contravened Section 37(2)(a) of the LPA in that the Respondent failed to co-operate with the LPC investigation. The Respondent breached the court order of her ladyship Fischer J. by threatening Colonel Smit, was arrested and released on bail. The Respondent consulted with clients without acceptance of a brief from an attorney, instead, he accepted a brief directly from clients, thus contravening Section 34(2)(a)(i) and paragraph 27.2 of the LPC's code of conduct.

74. The Respondent accepted payments directly from clients without receipt of a brief from an attorney, thus contravening paragraph 27.4 of the LPC's code of conduct. The Respondent utilised Attorneys David Stevens Nthite and K. Masemola's details without their consent.

75. Further argued that it is evident in that extremely serious allegations have come to the attention of the Applicant and the Respondent's conduct stands to jeopardise the integrity of the profession, has been contemptuous of this Court of which he is an officer and could further expose other legal practitioners as well as members of the public to practices which are unbecoming of an office of this Court.

76. Applicant submitted that the Court will find that the Applicant has made out a sufficient case to have the Respondent struck off with immediate effect.



77. Whilst the Respondent, in his papers contended that, on the 19<sup>th</sup> of May 2021 he received the Applicant's notice of motion as explained above and the Applicant called upon him to answer to the allegations of allege unfit and improper to practice as a legal practitioner, indicating that he must admit that he had difficulties in relation to understanding what was expected from him, insofar as his answering affidavit should be, due to the fact that, allegations were serious wild-hearsay he could not understand what informed allegations as the person deposed an affidavit seemingly was deposing affidavit on behalf of unknown complainants against him however, he had to answer to the allegations as possible as he could. In answering he denied all allegation levelled against him without any contra submissions or averments.

78. The Respondent replied with a bare denial. He further pleaded that certain allegations and matters are sub-judice. He further submitted in court that this application is premised on the contentions that the LPC has violated the rules of natural justice by not affording the him an opportunity to make representations before the disputed decisions were taken; that the LPC did not have the powers to make the impugned decisions without first finalizing the disciplinary proceedings; that the LPC failed to apply itself to the holistic legal framework regulating the disciplinary hearing process; and that the disputed allegations and decisions are unreasonable.

79. Further contended that, he responded to the complaints by filing his answering affidavit in response thereto. It is clear that the Respondent's grievance is that no formal disciplinary hearing was conducted by the Applicant (LPC), it would have

been ideal for him that he should have been called for a proper disciplinary hearing and that a hearing be conducted and concluded. He is of the view that it is unfair and unjust that the LPC took the decision based on faceless complainants, hearsay allegations and the response thereto. This court is of the view though that his contentions are incorrect. Nothing expels the Applicant from taking a decision based on the evidence in the form of affidavits.

80. Further arguing that the Applicant allegedly investigated the complaints, made a determination based on the affidavits, to launch an application to the High Court for the striking-off, alternatively suspension of the Respondent. Respondent was adamant in submitting that it was a function of the court to conduct an investigation and to decide on the fitness of the Respondent to continue to practice as an Advocate not the Applicant and that, the findings of the Applicant are not binding on the Court. He continued to make further submissions that were not relevant to the matter at hand and not addressing issues raised in the Applicants founding affidavit. This court will not clog the judgement on these issues as they were also submitted from the bar without any evidence what so ever.

81. The Applicant further submitted legal argument in that bare denials and *sub judice* pleas are not substantial, the Respondent wholly fails to plead with sufficient particularity and specificity as required in terms of the Uniform Rules of Court. Accordingly, in terms of the *Plascon-Evans* rule, this application must be granted. Making reference the salient decision of the SCA applies:

*“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in*



*his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."*<sup>1</sup>

82. In that the Answering Affidavit falls wholly short of these standards and the Respondent must suffer the fatal consequence attendant thereto. Further contending that the defence proffered by the Respondent is that some of the complaints forming part of this application are *sub judice* and he failed to provide averments relating to the prejudice that would ensue as a result of this application, the *sub judice* principle, at the face of it, finds no relevance in his application.

83. Further made reference to a pertinent decision of the SCA: in that

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<sup>1</sup> *Wightman t/a JW Construction vs Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 13.



*"...Advocates are required to be of complete honesty, reliability and integrity. The need for absolute honesty and integrity applies both in relation to the duties owed to their clients as well as to the courts. The profession has strict ethical rules to prevent malfeasance. This is for good reason. As officers of the court, Advocates serve a necessary role in the proper administration of justice. Given the unique position that they occupy, the profession has strict ethical rules."*<sup>2</sup>

84. Also submitted that the Respondent has breached this standard for the reasons stated in the affidavits in support of this application. Accordingly, his striking off from the roll of legal practitioners is sought. The striking off is well-established: *"This court in Jasat v Natal Law Society 2000 (3) SA 44 (SCA) ([2000] 2 All SA 310 (A) placed the following guidelines which were followed with approval in Malan & another v Law Society of the Northern Provinces [2008] ZASCA 90; 2009 (1) SA 216 (SCA) para 4: 'First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry.*

*Second, it must consider whether the person concerned "in the discretion of the Court" is not a fit and proper person to continue to practise. This involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment.*

*And third, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.'*

*The principles that apply in striking off an attorney from the roll also apply where an advocate is concerned. It is common cause that these proceedings are not ordinary civil litigation proceedings but are said to be sui generis in nature. The GCB as custos morum of the profession acts in the interest of the profession, the court and the*

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<sup>2</sup> *Johannesburg Society of Advocates and Another v Nthai and Others* 2021 (2) SA 343 (SCA) at para 1.

*general public. The GCB's role is to present evidence of the alleged misconduct to court, and for the court to exercise its disciplinary powers. On the other hand, the practitioner is expected to proffer an acceptable explanation to gainsay the allegations. The nature of the proceedings is not subject to the strict rules that govern ordinary civil proceedings. (See General Council of the Bar of South Africa v Matthys 2002 (5) SA 1 (E) para 4 and Society of Advocates of South Africa (Witwatersrand Division) v Edeling 1998 (2) SA 852 (W) at 859I et seq.)"*<sup>3</sup>

85. Submitting that the Respondent has not pleaded a single fact in opposition of the claims contained in the affidavits supporting this application and that the probability that all these complaints, stemming from various sectors of society and government institutions, not least the Courts and the police services, spanning over a period of time, are meritless.

86. In relation to the second leg, they submitted that the contemptuous, repetitive and egregious nature of the complaints against the Respondent evidence conduct of a practitioner that is not fit and proper. The great number of the complaints, independent of the other, would warrant his striking off of the roll, if not at the least, suspension therefrom.

87. Last and in consideration of the third leg, the complaints against the Respondent evidence contemptuous, repetitive and egregious conduct not befitting of a legal practitioner. These complaints, not least from various Courts and members of the public, whom the Applicant and this

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<sup>3</sup> *Jiba and Another v General Council of the Bar of South Africa and Another; Mrwebi v General Council of the Bar of South Africa* 2019 (1) SA 130 (SCA) at para 6.



Court have a duty to protect, warrant a finding that the Respondent stands to be struck off from the roll. As shown, this is not a case in which there has been a 'moral lapse' (*Law Society of the Cape of Good Hope v Peter* 2009 (2) SA 18 (SCA) para 16) which the offending party admits and undertakes will not be repeated. It is therefore not a case in which a court may be satisfied that the offending conduct will not recur (*Malan* at para [28]). If anything, the affidavits in support of this application are replete with examples of the disdain with which the Respondent perceives the Courts to the extent of disregarding their orders.

#### **APPLICATION OF LEGAL PRINCIPLES AND THE FACTS**

88. This court is of the view that the rules of natural justice were observed by the LPC in this instance because the Respondent seized the opportunity to answer to the complaints by filing answering affidavits in response thereto. The audi alterem partem principle was adhered to.

89. In *Cape Law Society v Gihwala* [2019] 2 All SA 84 the following is stated: "In the circumstances the Act clearly envisages situations where a society may decide that the evidence before a partially completed enquiry is of such a conclusive or overwhelming nature in respect of acts of serious misconduct, that it would not only be a waste of time to proceed with it to completion but in fact the interests of justice demand that application should be made immediately to a Court for an Order striking or suspending the practitioner concerned, as the misconduct does not merely warrant the imposition of a minor sanction such as a fine or a reprimand. It could hardly have been



intended by the legislature that in such instances, where a society will inevitably have to proceed to Court for an Order striking or suspending a practitioner, it will have to forsake the costs it has incurred in a partially completed disciplinary enquiry. But of course, each matter will have to be decided on its own facts and particular circumstances.”

90. In *Law Society of the Northern Provinces v Morobadi* [2018] ZASCA 185; [2019] JOL 40677 (SCA) the following is stated: “The high court dismissed the procedural challenge, holding that the Law Society was not bound by the decision of the committee as the committee was not a disciplinary committee, but rather an investigative committee. The high court’s reasoning was that it was not peremptory for the Council to have pursued a formal charge before a disciplinary committee, if in its opinion, the respondent was no longer considered to be a fit and proper person to remain in practice as an attorney”.

91. In exercising our discretion, this court has to firstly establish if there was offending conduct on the part of the respondent. Once the court is satisfied that the offending misconduct has been established the next enquiry that would follow - would be whether he is fit and proper to continue to practise. In this regard the court has to weigh the complaint against the conduct expected of a legal practitioner. The court’s role is not there to impose a penalty but the prime consideration is to ensure that the interests of the public is protected<sup>4</sup>.

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<sup>4</sup> *Jasat v Natal Law Society* 2000 (3) SA 44 SCA at 51 B-I

92. In summary the court is required to have regard to a threefold enquiry process, namely:

- (a) the court must first decide as a matter of fact whether the alleged offending conduct by the legal practitioner has been established;
- (b) if the court is satisfied that the offending conduct has been established, a value judgment is required to decide whether the person concerned is not a fit and proper person to practise as a legal practitioner;
- (c) if the court decides that the legal practitioner concerned is not a fit and proper person to practise as a legal practitioner, it must decide in the exercise of its discretion whether in all the circumstances of the case the legal practitioner in question is to be removed from the roll or merely suspended from practice. Ultimately this is a question of degree;
- (d) the court's discretion must be based upon the facts before it and facts in question must be proven upon a balance of probabilities. The facts upon which the court's discretion is based should be considered in their totality. The court must not consider each issue in isolation<sup>5</sup>.

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<sup>5</sup> Jasat v Natal Law Society 2000 (3) SA 44 SCA par 10

93. In essence the respondent disputes all the allegations levelled against him. It is of paramount importance to note that the Respondent was and still aware of all these allegations but he opted not to respond to the allegations alluded by all complainants. This court will not repeat the complaints as they are clearly stated in the background of facts. We note that the Respondent did not make any attempts in responding to the Applicants correspondence when such complaints were raised or communicated to him. It is also evident that he never appreciated the fact that he had an obligation to at least respond such queries.
94. The LPC is perfectly entitled to take a decision to launch an application before the High Court in order for the High Court to decide how to discipline the Respondent, if any, seeing that he is an officer of the court. It is the Court that is enjoined to take action against practitioners in the face of any serious transgressions.
95. All that the LPC does is to investigate the complaints, launch the application and make some representations to the Court, seeing that it is the controlling body. It is the Court that has to decide.
96. In *The Legal Practice Council v Motlhabani (UM 148/18) [2020] ZANWHC 76* the Court (per Hendricks DJP & Nonyane AJ) held: It is not peremptory for the applicant to have pursued formal charges before a disciplinary committee, if in its opinion' the respondent was no longer a fit and proper person to continue to practice as an attorney. The applicant may proceed with an application to strike without pursuing a formal charge before a disciplinary committee if in its



opinion, having regard to the nature of the charges, a practitioner is no longer fit and proper to remain on the roll of attorneys.

97. As alluded to earlier, the applicant need not at first conduct a disciplinary hearing before it can decide to apply to Court for the suspension and or removal/striking off of an attorney in terms of Section 72 (6) of the Attorney's Act."
98. Now dealing with an aspect raised by the Respondent in questioning the locus standi of the Applicant. The Respondent questioned the locus standi of the Applicant in that he does not understand why they brought this allegation before this court in that there was never a disciplinary hearing and neither invited to any disciplinary hearing. It is important to appreciate that the Applicant acts in the best interest of the legal profession, the court and the public.<sup>6</sup> , in a matter such as this, the Applicant would have failed their duty had they failed to place the information at their disposal, which was obviously material to the question of Mr Teffo's fitness, before the court. It is also important to emphasise that the Applicant is governed by the LPA, which regulates the professional conduct and disciplinary proceedings in respect of legal practitioners.<sup>7</sup> It is, however, only the high court that can strike their name from the roll of legal practitioners<sup>8</sup> and it retains the jurisdiction to adjudicate upon and make orders in respect of matters concerning the conduct of legal practitioners.<sup>9</sup>

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<sup>6</sup> *Society of Advocates of South Africa (Witwatersrand Division) v Cigler* 1976 (4) SA 350 (T) at 358D. See also *Kekana v Society of Advocates of South Africa* (above fn3) at 655G-H.

<sup>7</sup> Chapter 4 s 36-44.

<sup>8</sup> Section 40(3)(a)(iv).

<sup>9</sup> Section 44.

### **TAKING MONEY DIRECTLY FROM CLIENT**

99. It is evident that the Respondent accepted payments directly from clients without receipt of a brief from an attorney, thus contravening paragraph 27.4 of the LPC's code of conduct. The following complaints attest to such.

#### **Thembelani Khambule Complaint:**

100. Thembelani Khambule and three other colleagues were dismissed from the SAPS for alleged misconduct and was subsequently reinstated by the Safety and Security Sectorial Bargaining Council to resume their respective contractual obligations. The Respondent made them to sign contingency fee agreements on the 13<sup>th</sup> of January 2020. Khambule and them were subsequently reinstated and there was therefore no need to pursue the application in the Labour Court. They handed a letter to the Respondent which terminated his mandate and the contingency fee agreement. The Respondent advised them that they could not withdraw he billed them an amount of R77,350.00. Khambule paid the Respondent an amount of R10,000.00. The Respondent contravened the provisions of section 34(2)(a)(i) of the Legal Practice Act read with the provisions of paragraph 272 of the South African Legal Practice Council's Code of Conduct in that he consulted with clients without the acceptance of the brief from an attorney and instead accepted a brief directly from clients. In furtherance of the above, the Respondent accepted payment directly from clients for purportedly rendering legal services without the receipt of a brief from an attorney.

101. This modus operandi of the Respondent is evident with a number of complaints, to name a few,
102. Phumudzo David Makhuvha paid an amount of R13,500.00 (THIRTEENTHOUSAND FIVE HUNDRED RAND) to the Respondent however the Respondent would ignore his phone calls when he demanded services.
103. Lebogang Emmanuel Ntamo paid the Respondent an amount of R 4,500.00 (FOUR THOUSAND FIVE HUNDRED RAND). Subsequent to paying the Respondent, Ntamo has been unable to reach the Respondent.
104. Moshabane Bernard Tladi paid the Respondent an amount of R 4,500.00 (FOUR THOUSAND FIVE HUNDRED RAND), when Tladi requested a refund, he was told by the Respondent that it will never be paid back as he had a right to it.
105. Andrew Noko Malatsi. Malatsi paid an amount of R 35,000.00 (THIRTY-FIVE THOUSAND RAND) to the Respondent. The Respondent further requested Malatsi to pay an amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND) to get information, which he was privy to, and Malatsi was further given someone else's banking account details.
106. Maduvhahafani Mamkwe paid an amount of R 35,000.00 (THIRTY-FIVE THOUSAND RAND) into the Respondent's banking account. The Respondent has not provided Mamkwe with any results or a receipt for the monies received. He was further asked by the Respondent to pay an amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND). The Respondent never assisted him.



107. Themba Patrick Mabena paid an amount of R 27,000.00 (TWENTY-SEVEN THOUSAND RAND) into the Respondent's banking account. The Respondent has not provided Mabena with any results or a receipt for the monies received. The Respondent requested Mabena to pay another amount of R 7,500.00 (SEVEN THOUSAND FIVE HUNDRED RAND) was further given someone else's banking account details.
108. Anna Mapaseka Mofokenq paid an amount of R 5,500.00 (Five Thousand Five Hundred Rand). No serves were rendered by the Respondent.
109. David Matiane Matlhoko deposited an amount of R 92,500.00 (NINETY-TWO THOUSAND FIVE HUNDRED RAND) into the Respondent's trust account. practitioners, who addressed a letter of demand to the Respondent and who tried to contact the Respondent on multiple occasions, to no avail.
110. This court is satisfied that the Respondent consulted with clients without acceptance of a brief from an attorney, instead, he accepted a brief directly from clients, thus contravening Section 34(2)(a)(i) and paragraph 27.2 of the LPC's code of conduct. The Respondent accepted payments directly from clients without receipt of a brief from an attorney, thus contravening paragraph 27.4 of the LPC's code of conduct.

in *Rösemann v General Council of the Bar of South Africa*,<sup>10</sup> Heher JA had this to say:

'At this point the referral rule and its implications ... become significant. An advocate in general takes work only through the instructions of an attorney. The rule is not a pointless formality or an obstacle to efficient professional practice, nor is it a protective trade practice designed to benefit the advocacy. The rule requires that an attorney initiates the contact between an advocate and his client, negotiates about and receives fees from the client (on his own behalf and that of the advocate), instructs the advocate specifically in relation to each matter affecting

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<sup>10</sup> *Rösemann v General Council of the Bar of South Africa* 2004 (1) SA 568 (SCA) para 28.

the client's interest (other than the way in which the advocate is to carry out his professional duties), oversees each step advised or taken by the advocate, keeps the client informed, is present as far as reasonably possible during interaction between the client and the advocate, may advise the client to take or not take counsel's advice, administers legal proceedings and controls and directs settlement negotiations in communication with his client. An advocate, by contrast, generally does not take instructions directly from his client, does not report directly or account to the client, does not handle the money (or cheques) of his client or of the opposite party, acts only in terms of instructions given to him by the attorney in relation to matters which fall within the accepted skills and practices of his profession and, therefore, does not sign, serve or file documents, notices or pleadings on behalf of his client or receive such from the opposing party or his legal representative unless there is a Rule of Court or established rule of practice to that effect (which is the case with certain High Court pleadings but finds no equivalent in magistrates' court practice). The advocate does not communicate directly with any other person, save opposing legal representatives, on his client's behalf (unless briefed to make representations), does not perform those professional or administrative functions which are carried out by an attorney in or from his office, does not engage in negotiating liability for or the amount of security for costs or contributions towards costs or terms of settlement except with his opposing legal representative and then only subject to the approval of his instructing attorney.

#### CHARGING EXHORBITANT AND UNREASONABLE AMOUNTS

111. Looking at inconsistencies and lack of uniformity in the Respondent's fee structure, it is indicative that such fees were not of regulations. It is a principle issue that fees charged by an advocate must be reasonable. One who charges an unreasonable fee, is guilty of overcharging or overreaching.<sup>11</sup> Overreaching involves an abuse of a person's status as an advocate, by taking advantage for personal gain of the person paying.<sup>12</sup> For an advocate to take advantage of that situation by marking a fee knowing that it is not a proper fee, but one that is unreasonable and improperly marked under the rules, is an abuse of the advocate's position and amounts to overreaching.<sup>13</sup> As it was put in *Society of Advocates of South Africa (Witwatersrand Division) v Cigler*: '... the charging of

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<sup>11</sup> *General Council of the Bar of South Africa v Geach* (above fn 3) para 131.

<sup>12</sup> *Ibid* para 132.

<sup>13</sup> *Ibid* para 132.



excessive fees is not only a breach of the Rules but is also a matter of serious concern'.<sup>14</sup>

112. The Respondent went even further by taking money from vulnerable and desperate clients given their situations. He took an advantage of their situation by exerting position of power in that he actually demanded that they pay him upfront knowingly that he will never render the service as expected. The nature of complaints is similar in that all complainants paid money to his account or into somebody else's account at the instruction of the Respondent. When inquiries or follow-up are done by the complainants, he does not respond he simply threatens them. That's an abuse and exploitation at its best. The Respondent contravened the provisions of paragraph 3.6 Legal Practice Council's Code of Conduct in that he failed to maintain legal professional privilege and confidentiality regarding the affairs of his clients.
113. The applicant pointed out that the respondent's conduct was serious. By virtue of the Legal Practice Act, his conduct is considered to be serious transgressions and offences punishable.
114. We have noted that from his answering papers the respondent does not proffer an explanation for his conduct in accepting briefs and taking money directly from clients.
115. He further does not deny that he misappropriated clients' monies. It was also not disputed that all the said complainants paid the Respondent. It is also noted that the respondent failed to cooperate with the Applicant when he was called to respond to allegations levelled against him, more specifically he failed to

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<sup>14</sup> *Society of Advocates of South Africa (Witwatersrand Division) v Cigler* (above fn 14) at 354.



submit the relevant documentation despite repeated requests from the Applicant.

116. It is a fundamental duty of every legal practitioner to ensure that he or she is accountable on client's funds, he is still expected to keep proper records. Keeping of proper accounting records, it is not only for legal practitioners who holds fidelity fund certificates, such is expected from all legal practitioners. This accounting recording underpins the rationale that the interest of the public must be protected at all times. Any failure to do so would be considered to be serious. It is paramount for a legal practitioner to ensure that the account is managed properly. The very essence of a taking client's monies should be risk mitigated.
117. As alluded to above the issue for determination is whether the misconduct in question is so serious and of a nature that it manifests the lack of integrity and dishonesty rendering him unfit to be a legal practitioner.
118. In the belated affidavit of the respondent, the respondent denies every allegation without any substantial evidence or a fact. However even when he made submissions from the bar, which is unorthodox in these proceedings, no evidence was presented to illustrate same. The fact remains he took money directly from the clients. Such monies were paid to him directly and others were paid to other people's accounts. This court can safely conclude that this was misappropriation of funds. Bearing in mind that no service was delivered by the Respondent as expected.

119. In our view the misappropriation of client's funds constitutes theft and the respondent further concealed this misconduct by manipulating clients in that he will assist them. This in itself, portrayed dishonesty and a lack of integrity on his part.
120. This court is convinced that the Applicant have laid sufficient grounds in striking off of the practitioner.
121. This then brings us to what the appropriate sanction would be. It was submitted that his misconduct warrants his removal. It was proffered that this court could only order the suspension in exceptional circumstances. In these circumstances it was argued that no such exceptional circumstances exist.
122. A legal practitioner is duty bound to act in the interest of his/her clients above his/her own and in so doing, exercise the highest degree of good faith in his/her dealings with his/her clients.
123. As the regulator for the legal profession, the Applicant, is mandated to ensure that the legal practitioners comply with the relevant legislation and the code of conduct. The Legal Practice Council has the duty to act where a legal practitioner falls short on his/her conduct. All legal practitioners are required

to conduct themselves with utmost honesty and integrity and in the best interests of their clients.

124. It is trite that in applications of this nature, there is no *lis* between the applicant and the respondent. The applicant, by virtue of its statutory duties, furnishes the court with the relevant facts and findings. Eventually the court has to exercise its own discretion after having heard both parties.

125. In the exercise of our discretion, having considered the facts in their totality and having heard submissions of both parties, we find that the respondent's acts of misconduct were serious and dishonest. We are mindful that the main consideration is the protection of the public. It was not disputed that the Respondent manipulated and forced the clients to pay money in his account or accounts of other people to such an extent of threatening them, one could easily make reference to Khambule and his colleagues going to an extent of breaching confidentiality. The respondent's misconduct was repetitive and he failed to provide plausible explanations for his actions. As alluded to above, he filed a brief answering affidavit with bare denial. He failed to adequately address the various findings against him. This court was therefore limited to make a finding on the papers before it. Such calls for removal. His conduct warrants a finding that the Respondent stands to be struck off from the roll.

### MISLEADING THE COURT

126. Legal practitioners, whether practicing as advocates or attorneys, are officers of the high court. They are admitted by the court which authorises their



enrolment in the practice in which they are qualified and they owe a special ethical duty to the court. The high court retains the oversight over their conduct and the jurisdiction to pronounce on matters concerning their conduct. To this extent they practice under the auspices of the high court.

127. The Respondent Advocate Teffo was admitted as an advocate in the year 2009. Given his years of experience, he is required to be of completely honest, reliable and perform with integrity.<sup>15</sup> The need for absolute honesty and integrity applies both in relation to the duties owed to their clients as well as to the courts.<sup>16</sup> The profession has strict ethical rules to prevent malfeasance.<sup>17</sup> This is for good reason. As officers of the court, Advocates serve a necessary role in the proper administration of justice. Given the unique position that they occupy, the profession has strict ethical rules.
128. The Respondent placed the matter on an unopposed roll to secure a default judgment knowingly well that the matter was opposed and removed from the unopposed roll on 10 June 2020. He further misled the Labour Court by handing a copy of Regulation 15 of the SAPS 2006 Disciplinary regulations which differed from the copy submitted by opposing counsel.

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<sup>15</sup> *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 655I-656A; *General Council of the Bar of South Africa v Geach and Others, Pillay and Others v Pretoria Society of Advocates and Another, Bezuidenhout v Pretoria Society of Advocates* [2012] ZASCA 175; 2013 (2) SA 52 (SCA) para 126, with reference to an earlier judgment of this court, viz *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G-H.

<sup>16</sup> *General Council of the Bar of South Africa v Geach* (above fn 3) para 126.

<sup>17</sup> *Kekana v Society of Advocates of South Africa* (above fn 3) para 13.

129. On the 27<sup>th</sup> of September 2019 Judge Moosa ordered that the Respondent's conduct should be reported to the Legal Practice Council as a matter of urgency. Following that, on 4 October 2019 the Judge Fisher granted an urgent interdict against the Respondent in the South Gauteng High Court on behalf of the SAPS and the State Attorney of Johannesburg. Judge Fischer recorded her concerns about the Respondent's attitude and the manner in which he conducted himself in Court. This conduct need not be exaggerated, the Respondent is guilty of unprofessional, dishonourable or unworthy conduct on the part of a legal practitioner in that he contravened various rules of the Legal Practitioners Profession, the Legal Practice Act, the Code of Conduct, and the South African Legal Practice Council Rules (LPC Rules).
130. It went to an extent of Deputy Judge President Ronald Sutherland having to complain on behalf of the Justice Msimeki and provided a report on the Respondent's conduct as well as the Court record of the proceedings outlining the ambit of his complaint against the Respondent. The Respondent has conducted himself in a disrespectful, unethical, unprofessional and contemptuous manner when addressing the Court by speaking out of turn and saying things such as "just listen to me I am talking", "I respect you as a judge, but I do not worship you", "you can go elsewhere and report me", "you are not a sober judge and we cannot continue with a Judge who is not sober minded", as well as accusing the judge of not being accountable and being biased. The Respondent has failed to show respect and act in an ethical and professional manner at all times during the Court proceedings and when addressing the Judge.



131. According to Christoffel H van Zyl IV & Jo-Mari Visser, as stipulated in their article: Legal Ethics, Rules of Conduct and the Moral Compass –Considerations from a Law Student's Perspective "When one observes that all these "fallen" lawyers were once regarded as fit and proper persons and in all likelihood were familiar with the content of legal ethics, it nurtures the realisation that a lawyer cannot rely on mere rules and codes alone to be a fit and proper person. It would have been prudent for the Respondent to use his moral compass". It is clear that the Respondent failed to use his ability to judge what is right and wrong and act accordingly. He had actually mislaid his moral compass.
132. In *Vassen v Law Society of the Cape*<sup>18</sup> the attorney had stolen money by convincing an insurance company to pay the proceeds due under a life insurance policy to himself instead of to the beneficiary. He then used the money for personal purposes and denied doing so despite clear evidence to the contrary. The court ruled that he was not a "fit and proper" person to practise. Honesty, reliability and integrity are expected of an attorney. The lawyer is required to present the client's case in the best possible light with an indifference to the moral merits of the case<sup>19</sup>.

## CONCLUSION

133. It is important to note that the Respondent as a legal practitioner should have concentrated in fulfilling a dual function by assisting his

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<sup>18</sup> 1998 (4) SA 532 (SCA).

<sup>19</sup> Eshete "Does a lawyer's character matter?" in Luban D (ed) *The Good Lawyers' Roles and Lawyers' Ethics* (1984) 270-285 at 272.



clients on the one hand and by promoting justice in society on the other hand. The Respondent had no absolute regard for justice. Kirk-Cohen J in *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (T) at 395 stated: 'The attorney is a person from whom the highest standards are expected by the profession and [the] Court. ... 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 society at large, to the courts and to the profession ... only the very highest standard of conduct and repute and good faith are consistent with 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 maintain this confidence and trust, all members of the profession must exhibit the qualities set out above at all times.'

134. Therefore, this court is convinced that Respondent's conduct no longer meets the requisite threshold of a fit and proper person. This court is satisfied that the applicant has proven its case on balance of probabilities that the Respondent is not a fit and proper person and that his continuance is practicing would involve danger to the public or the good name of the profession. The Respondent contravened Section 37(2)(a) of the LPA in that the Respondent failed to cooperate with the LPC investigation.

135. This court does find that the Respondent misled the courts in a number of occasions. He was even contemptuous in a number of instances.
136. The Respondent breached the court order of Fischer J. by threatening Colonel Smit and subsequently was arrested and released on bail.
137. The Respondent consulted with clients without acceptance of a brief from an attorney, instead, he accepted a brief directly from clients, thus contravening Section 34(2)(a)(i) and paragraph 27.2 of the LPC's code of conduct.
138. The Respondent accepted payments directly from clients without receipt of a brief from an attorney, thus contravening paragraph 27.4 of the LPC's code of conduct. The Respondent utilised Attorneys details without their consent.
139. The Respondent, assaulted and intimidated member of the SAPS, which resulted in an urgent interdict application prohibiting the Respondent from entering the SAPS and State attorney building and further, the Respondent was interdicted from intimidating, threatening, victimising and harassing SAPS and State attorney personnel.
140. The Respondent is being investigated for corruption activities as defined in the Prevention and Combating of Corrupt Activity Act.



141. The Applicant presented a letter a scornful letter written by the Respondent dated 25 July 2022 addressed to Advocate GD Baloyi, the Director of Public Prosecutions Gauteng Division Pretoria. This court is not certain as to what to make of this letter as its not a complaint against the Applicant it is directed to Advocate Baloyi. In salient, the Respondent asserts in this letter that, he has been experiencing harassment by the court, the state, i.e., the police, the Minister of police, the prosecution including the office of the director of public prosecution in Johannesburg. Further making reference to the court of Judge Maumela as the presiding officer in case 636/10/2014. This court does not have a jurisdiction to deal with the current occurrences of another court. Therefore, this court will not concentrate much on untested and unfounded allegations raised by the Respondent. This court will not waste time in dealing with a delinquent assumptions and misconstrued aspersions levelled against officers of the court. Needless to say, the court is short of words in attributing this level of behaviour projected by the Respondent, save to say that he has no regard for justice. Respondent going to such an extent of blaming the Office of the President for his arrest on the 28<sup>th</sup> of April 2022 in court. There is no basis of these allegations. Entertaining this allegation will not take this matter anywhere. It is said that "an advocate must serve many masters"<sup>20</sup>. The respondent has not attempted to deal with any of the complaints levelled against him including

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<sup>20</sup> (Dennison and Kiryabwire "The Advocate-Client Relationship in Uganda" in Dennison and Tibihikirra-Kalyegira (eds) *Legal Ethics and Professionalism: A Handbook for Uganda* (2014) 53). Legal practitioners are bound by three obligations – namely, obligations to clients, the profession and the court (Lacovino "Ethical Principles and Information Professionals. Theory, Practice and Education" (28 October 2013) <https://www.tandfonline.com/doi/pdf/10.1080/00048623.2002.10755183?needAccess=true> (accessed 2018-05-27) 68). The second obligation can be further broken down into the component obligations of the legal profession, such as are expressed in the Admission of Advocates Amendment Act (53 of 1979), the Advocates Act (74 of 1964), the Attorneys Act (53 of 1979), the Legal Practice Act (28 of 2014) and the Rules of the Law Society. A client is any individual, group of persons, juristic person, entity or trust, who is duly represented by an advocate and is therefore responsible to pay him costs (Kiryabwire "Duties of the Ugandan Advocate" in Dennison and Tibihikirra-Kalyegira (eds) *Legal Ethics and Professionalism: A Handbook for Uganda* (2014) 54). An advocate is indebted to the client to perform duties such as adequate representation, regular updates and communication with regard to the client's case, as well as fair and honest billing, among other things. These duties may be tacitly inferred as part of professional conduct (Kiryabwire in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 59). The advocate client relationship should adopt an approach that positions the client at the centre, thereby championing the client's best interests at all times (Dennison and Kiryabwire in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 71). By design, an advocate cannot take instructions directly from a client without the intervention of an attorney.



other complaints as stated in annexures and some additional offences based on the Act, Code of Conduct and the Rules remain unanswered. It is our view that the contention by the respondent that the applicant failed to give him opportunity to address the complaints with him personally, by way of an enquiry before the applicant, should not be given as an excuse for not dealing with them because, in these proceedings the respondent is given yet another opportunity to address the said complaint. This is so because the court is not only confined to pronouncing on the transgressions of the Act, the Rules and Code of Conduct, the court, depending on the gravity of the offences is also required to exercise a discretion whether to suspend or to strike the respondent from the roll of legal practitioners. What the court is faced with are bare denials, where the respondent has not defended with any particularity the complaints against him.

142. We do find that the Respondent lacks the sense of responsibility, honesty and integrity and such attributes are characteristics of an Advocate. it is clear that the Respondent does not possess any of the above.

143. This court is satisfied that all of various aberrations have been established on a preponderance of probabilities. Bearing in mind that this court has taken into cognisance that the purpose of these proceedings to strike an advocate from the roll is the protection of the rules regulating the profession, rather than punishment of the transgressor.

144. In the circumstances the removal of his name from the roll of legal practitioners is justified. We are mindful that the applicant is entitled to costs. An order has been sought that the respondent pay the costs of this application on the scale as between attorney and client. We have considered the submissions and find

that in these circumstances punitive costs are not justified<sup>21</sup>. It is trite that in applications of this nature, there is no *lis* between the Applicant and the Respondent. The Applicant is performing its statutory function of placing facts before the Court to exercise its disciplinary powers over truant practitioners. The Applicant is entitled to costs

145. In the premises the following order is made:

1. The Respondent, ADVOCATE MALESELA DANIEL TEFFO, is hereby removed from the roll of legal practitioners.
2. The Respondent surrender and delivers his certificate of enrolment as a legal practitioner to the Registrar of this Honourable Court.
3. In the event of the Respondent failing to comply with the terms of this order detailed in paragraph 2 (two) supra 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. The Respondent is prohibited from handling or operating on his banking accounts, used in receiving monies for clients (referred to herein as creditors) as detailed in paragraph 5 (five) infra.

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<sup>21</sup> Law Society of the Northern Provinces v Mogami 2010 (1) SA 186 SCA



5. JOHAN VAN STADEN: The Director of the Gauteng Provincial Office of the Applicant (or his successor as such), in his capacity as such, be appointed as curator bonis (curator) to administer and control the banking accounts of the Respondent, including accounts relating to insolvent and deceased estates and any estate under curatorship connected with the Respondent's practice as a legal practitioner and including (if applicable), also, the separate banking accounts opened and kept by Respondent at a bank in the Republic of South Africa in terms of section 86(1)&(2) of Act No 28 of 2014 and/or any separate savings or interest bearing accounts as contemplated by Section 86(3):

5.1 Immediately to take possession of Respondent's accounting 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 account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which Respondent was acting at the date of this order.

5.2 Subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control and where monies had been paid incorrectly and unlawfully from the undermentioned accounts, to recover and receive it, if necessary in the interest of persons having lawful claims upon the account(s) and/or against Respondent in respect of monies held, received by Respondent in terms of Section 86(1)&(2) and/or Section 86(3), 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 Respondent was and may still have been concerned and to receive such monies and to pay the same credit of the account(s);

5.3 To ascertain from the Respondent's records the names of all persons on whose account the Respondent appears to hold or to have received monies (hereinafter referred to as "creditors") and to call upon the Respondent to furnish the Curator within 30 days of the date of this Order or within such further period as the Curator may agree to in writing with the names and addresses of, and amounts due to, all creditors;

5.4 To call upon such creditors to furnish such proof, information and/or affidavits as the Curator 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 creditor has a claim in respect of money in the said accounts 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 creditor or creditors, without prejudice to such creditors' right of access to the civil courts;

5.6 Having determined the amounts which, he considers are lawfully due to 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 account(s) of Respondent after payment of the admitted claims of all 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 No 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of Respondent, 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 Respondent to 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 Respondent, if he is solvent, or, if Respondent is insolvent, to the trustee(s) of Respondent's insolvent estate.

5.8 In the event of there being insufficient monies in the banking account(s) of the Respondent, in accordance with the available documentation and information, to pay in full the claims of 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 banking account(s) amongst the creditors alternatively to pay the balance to the Legal Practitioners' Fidelity Fund Board of Control.

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 service of attorneys, 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 account (s) of Respondent has or have been dealt with, until such time as the Board notifies him that he may regard his duties as Curator as terminated.

6. The Respondent immediately delivers his accounting records, banking accounts, fee book, records, files and documents containing particulars and information relating to:

6.1 Any monies received, held or paid by Respondent for or on account of any person while practising as a legal practitioner;

6.2 Any estate of a deceased person or an insolvent estate or an estate under curatorship administered by Respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

6.3 Any insolvent estate administered by Respondent as trustee or on behalf of the trustee in terms of the insolvency Act, No 24 of 1936;

6.4 Any trust administered by Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

6.5 Any close corporation liquidated in terms of the Close Corporation Act, 69 of 1984, administered by Respondent as or on behalf of the liquidator; and

6.6 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, files and documents are concerned, Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such Curator or his nominee.

7. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon her or after a return by the person entrusted with the service thereof that he 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.

8. 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 Respondent and/or the Respondent's clients and/or fund in respect of money and/or other property entrusted to the Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereto;

8.3 Publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 Wind-up of the Respondent's practice;

9. The Respondent be and is hereby removed from office as:

9.1 Executor of any estate of which Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estate 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 Estate 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 or 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. If there are any funds available 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 him (Respondent) in respect of his former 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 creditor(s) concerned for payment or recovery thereof.

11. A certificate issued by a director of the Attorney's 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.

12. The Respondent be and is hereby directed:
- 12.1 To pay, in terms of section 87(2) of Act 28 of 2014, the reasonable costs of the inspection of the accounting records of Respondent;
  - 12.2 To pay the reasonable fees of the auditor engaged by the Applicant;
  - 12.3 To pay the reasonable fees and expenses of the Curator, including travelling time;
  - 12.4 To pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the Curator as aforesaid;
  - 12.5 To pay the expenses relating to the publication of this order or an abbreviated version thereof;
  - 12.6 To pay the costs of this application on an attorney-and-client scale.
13. In the event of the Respondent failing to comply with any of the provisions referred to in this Order, the Applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South Africa, Act 106 of 1996, for the appropriate relief against the Respondent including but not limited to an Order for the committal of the Respondent to prison for the Respondent's contempt of the provisions of the abovementioned paragraphs.





TP BOKAKO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION: PRETORIA

I agree, it is so ordered



JS NYATHI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION: PRETORIA

#### APPEARANCES

Adv. MSONDEZO MFESANE Ka-SEBOTO: COUNSEL FOR THE APPLICANT

ADV. MALESELA DANIEL TEFFO

Date heard: 4 & 5 AUGUST 2022

Date of Judgment: 16 SEPTEMBER 2022

#### REFERENCE

1. Jiba and Another v General Council of the Bar of South Africa and Another; Mrwebi v General Council of the Bar of South Africa and Another 2019 (1) SA 130 (SCA).

2. General Council of the Bar of South Africa and Another v Jiba & Others 2019 (8) BLCR 919 (CC) [2019] ZACC 23.
  3. Law Society of the Northern Province v Bobroff and Others [2017] 4 All SA 85 (GP).
  4. Hemetson v Law Society of the Free State 2020 (5) SA 86 (SCA).
  5. Johannesburg Society of Advocates and Another v Nthai and Others [2020] ZASCA 171 (15 December 2020).
  6. South African Legal Practice Council v Mashabela (31148/20) [2021] ZAGPPHC 303 (18 May 2021).
  7. South African Legal Practice Council v Joynt (20873/20) [2021] ZAGPPHC 471 (28 July 2021).
  8. Founding Affidavit
- 002: Return of Service
  - 003: Notice of Removal
  - 004: Declaration
  - 005: Application for Substituted Service
  - 006: Practice Notes
  - 007: Final Set Down / Notice of Set Down
  - 010: Heads of Arguments
  - 011: Draft Court Order / Court Order
  - 012: Respondent Answering Affidavit
  - 013: Applicant Replying Affidavit
  - 014: Applicant's Supplementary Founding Affidavit
  - 015: Applicant's Further Supplementary Founding Affidavit
  - 016: List of Authorities