



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

**CASE NO: 6947/2021**

- |     |                                               |
|-----|-----------------------------------------------|
| (1) | REPORTABLE: <b>NO/YES</b>                     |
| (2) | OF INTEREST TO OTHER JUDGES:<br><b>NO/YES</b> |
| (3) | REVISED.<br>.....                             |

In the matter between:

**LIMPOPO PROVINCIAL COUNCIL OF THE  
SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

**APPLICANT**

**and**

**CHUEU INCORPORATED ATTORNEYS  
CL CHUEU  
THABO MILTON CHUEU**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT**

|                          |                            |
|--------------------------|----------------------------|
| BKK KOOPEDI              | 4 <sup>th</sup> RESPONDENT |
| CK TSOKU                 | 5 <sup>th</sup> RESPONDENT |
| S TSETSEWA               | 6 <sup>th</sup> RESPONDENT |
| PR GWANGWA               | 7 <sup>th</sup> RESPONDENT |
| PN MATHIBELA             | 8 <sup>th</sup> RESPONDENT |
| TSOKU CHUEU INCORPORATED | 9 <sup>th</sup> RESPONDENT |

|                 |
|-----------------|
| <b>JUDGMENT</b> |
|-----------------|

**NAUDÈ AJ:**

[1] The Applicant approached this court on an urgent basis and sought interim relief pending an investigation in to the affairs of the 1<sup>st</sup> Respondent. The Applicant applies, *inter alia*, for an order for the suspension of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents from practicing as attorneys for a period of 18 months pending the finalization of investigations into their conduct and disciplinary proceedings against them.

- [2] The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not oppose the application for suspension, and filed an explanatory affidavit wherein it was stated by the 2<sup>nd</sup> Respondent on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in his capacity as Managing Director of the 1<sup>st</sup> Respondent that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in principle consents to the suspension, but it is the modalities of the order which an issue is taken with. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents prayed for an alternative order envisaging a balance between the interest of the profession, and the continuity of the 1<sup>st</sup> Respondent.
- [3] Before dealing with the merits of the matter, I will deal with a *point in limine* raised by the 4<sup>th</sup> and 8<sup>th</sup> Respondents. The Applicant instituted this application by virtue of a resolution taken by the Limpopo Provincial Council on 8 September 2021. The resolution was only signed by the Chairperson of the Limpopo Provincial Council, Mr. Mangena. There were no minutes of the meeting held where it was resolved to institute the proceedings attached, nor an attendance register. The other members of the Limpopo Provincial Council did not co-sign the resolution either.
- [4] The 4<sup>th</sup> and 8<sup>th</sup> Respondents raised a *point in limine* to the effect that the resolution was fatally defective. It was submitted by the 4<sup>th</sup> and 8<sup>th</sup>

Respondents that from the Applicant's founding affidavit, and in particular paragraph 4.3 thereof, the Applicant consists of sixteen (16) legal practitioners comprising of ten practicing attorneys and six advocates, two teachers of law, one being a dean of a faculty of law at a university in the Republic and the other being a teacher of law, three fit and proper persons designated by the Minister, one person designated by Legal Aid South Africa and a person designated by the Legal Practitioners' Fidelity Fund.

- [5] It was submitted by the 4<sup>th</sup> and 8<sup>th</sup> Respondents that Rule 16.2 of the Rules of the Legal Practice Council states that the Provincial Council shall comprise of 6 (six) attorneys and 4 (four) advocates. It was submitted that paragraph 4.6 of the Founding Affidavit clearly states that the decision to institute the current proceedings was taken by the Limpopo Provincial Council but in the same paragraph it is indicated that the Management Committee takes such decisions in-between the meetings of the Council.
- [6] It was submitted that the resolution attached as LPC1 clearly indicates that LPC1 is the resolution of the Limpopo Provincial Council. According to the 4<sup>th</sup> and 8<sup>th</sup> Respondents, it appears that, the responsibility to institute applications against legal practitioners is the domain of the Limpopo Provincial Council. The resolution authorising the institution of

the current proceedings is signed by only one member of the Provincial Council, being the Chairperson.

[7] According to the 4<sup>th</sup> and 8<sup>th</sup> Respondents, the Chairperson, and deponent to the Applicant's founding affidavit cannot usurp the powers of the Council unto himself and perform functions of the Limpopo Provincial Council to the exclusion of the other members. The other members further did not confirm the correctness of the application or founding affidavit brought on their behalf.

[8] In response to the *point in limine* raised by the 4<sup>th</sup> and 8<sup>th</sup> Respondents, the Applicant contends that the *locus standi* challenge brought by the 4<sup>th</sup> and 8<sup>th</sup> Respondents is bad in fact and in law owing to the fact that by virtue of the office held by the Chairperson of the Applicant, the Chairperson is authorised to depose to affidavits in legal proceedings by and against the Applicant, and in an instance wherein the Chairperson is indisposed, the deponent to the replying affidavit, Adv. Tsatsi, is also authorised to act as the Chairperson and depose to affidavits on behalf of the Applicant.

[9] It seems the Applicant's response is misconceived. The 4<sup>th</sup> and 8<sup>th</sup> Respondents did not in raising the aforementioned *point in limine* challenge the Chairperson's authority to depose to the affidavit, but rather whether this application was instituted with the necessary authority and not *ultra vires*. The attack is not on the deponent whether or not he has the necessary authority to act on behalf of the Applicant or not. The attack is premised on the fact that, the institution of the proceedings is not authorized by Council.

[10] Counsel for the 4<sup>th</sup> and 8<sup>th</sup> Respondents referred me to **Griffiths & Inglis (Pty) Ltd v Southern Cape Blasters (Pty) Ltd 1972 (4) SA 249 (CPD)**. It was submitted by the 4<sup>th</sup> and 8<sup>th</sup> Respondent's counsel that in **Griffiths & Inglis (Pty) Ltd *supra*** the Respondent raised an objection *in limine* that there was no proper proof before court that the application had been duly authorized by the Applicant. The Applicant contended that it was implied in the affidavit of the managing director who was also the majority shareholder. The court rejected the contention by the Applicant and upheld the *point in limine* to the effect that there was no proper proof that the application had been duly authorised.

[11] **Corbett J** said the following in **Griffiths & Inglis (Pty) Ltd *supra* at 252F:**

*“In the present case the founding affidavit makes no express mention of authorization by the Company acting through its board of directors. The question of authority has been challenged in the opposing affidavit, and thus the onus is upon the applicant to show that the application has been authorised by the directors of the company. In as much as no contrary evidence had been placed before the Court by the Respondent, the minimum of evidence to use the words of Watermeyer J in Malls’s case will suffice.”*

- [12] Counsel for the 4<sup>th</sup> and 8<sup>th</sup> Respondent’s submitted that **Corbett J** went on to raise some unanswered questions at **255G-H of Griffiths & Inglis (Pty) Ltd *supra***, to come to a conclusion that the proceedings by the Applicant were not authorized: *“if, as seems possible, no formal resolution of the board of directors was taken, then in what way was this application authorized? And, if the board did purport to authorize the application in some manner other than by formal resolution, was such manner of authorization in accordance with the constitution of the applicant?”* **Corbett J** concluded that simply to aver that directors have authorized an application amounts to an assertion of a legal conclusion rather than a factual allegation.

- [13] Counsel for the 4<sup>th</sup> and 8<sup>th</sup> Respondents' argued that the same principle was demonstrated in a matter between **South African Broadcasting Corporation Ltd and Another v Mpofu (A5021/08) 2009 ZAGPJHC 2 [2009] 4 All SA 169 (GSJ) at para 26** where the court found as follows:-

*“Article 18.1 provides that subject to the statutes, a duly minuted resolution in writing signed by all the directors shall be as valid and effectual as a resolution passed at a meeting of the Board duly called and constituted. Article 18.4 provides that a written resolution which is not signed by all directors shall be inoperative until confirmed by a meeting of the Board.”*

- [14] In **Pretoria City Council v Meerlust Investments Ltd 1962 (1) SA 321 (AD) at page 325** it was stated as follows:-

*“The question of authority having been raised, the onus is on the petitioner to show that the prosecution of the appeal in this Court has been duly authorised by the Council; that it is the Council which is prosecuting the appeal, and not some unauthorized person on its behalf (cf. Mall (Cape) (Pty) Ltd. v. Merino Ko-operasie Bpk., 1957 (2) S.A. 347 (C) at pp. 351-2). As was pointed out in that case, since an artificial person, unlike an individual, can only function through its agents, and can only take decisions by the passing of resolutions in the manner prescribed by tis*



*constitution, less reason exists to assume, from the mere fact that proceedings have been brought in its name, that those proceedings have in fact been authorised by the artificial person concerned. In order to discharge the above mentioned onus, the petitioner ought to have placed before this Court an appropriately worded resolution of the Council.”*

- [15] In the case of **Mall (Cape) (Pty) Ltd v Merino Ko-operative Bpk 1957 (2) SA 347 (CPD)** the question as to the proof required of authority to institute legal proceedings on behalf of an artificial person such as a company was fully considered by **Watermeyer J**, who stated as follows at **page 351-352**:

*“I proceed now to consider the case of an artificial person, like a company or co-operative society. In such a case there is judicial precedent for holding that objection may be taken if there is nothing before Court to show that the applicant has duly authorised the institution of notice of motion proceedings. (see for example Royal Worcester Corset Co. v Kesler’s Stores, 1927 C.P.D. 143; Langeberg Ko-operasie Beperk v Folscher and Another, 1950 (2) S.A. 618 (C)). Unlike an individual, an artificial person can only function through its agents and it can only take decisions by the passing of resolution in the manner provided by its constitution. An attorney instructed to commence notice of motion*

*proceedings by, say, the secretary or general manager of a company would not necessarily know whether the company had resolved to do so, nor whether the necessary formalities had been complied with in regard to the passing of the resolution. It seems to me, therefore, that in the case of an artificial person there is more room for mistakes to occur and less reason to presume that it is properly before the Court or that proceedings which purport to be brought in its name have in fact been authorised by it. There is a considerable amount of authority for the proposition that, where a company commences proceedings by way of petition, it must appear that the person who makes the petition on behalf of the company is duly authorised by the company to do so (see for example Lurie Brothers Ltd v Archache, 1927 N.P.D 139, and the other cases mentioned in Herbstein and Van Winsen, Civil Practice of the Superior Courts in South Africa, at pp. 37, 38). This seems to me to be a salutary rule and one which should apply also to notice of motion proceedings where the applicant is an artificial person. In such cases some evidence should be placed before the Court to show that the applicant has duly resolved to institute the proceedings and that the proceedings are instituted at its instance. Unlike the case of an individual, the mere signature of the notice of motion by an attorney and the fact that the proceedings purport to be evidence that the proceedings have been properly authorized would be provided by an*

*affidavit made by an official of the company annexing a copy of the resolution but I do not consider that form of proof is necessary in every case. Each case must be considered on its own merits and the Court must decide whether enough has been placed before it to warrant the conclusion that it is the applicant which is litigating and not some unauthorized person on its behalf. Where, as in the present case, the respondent has offered no evidence at all to suggest that the applicant is not properly before Court, then I consider that a minimum evidence will be required from the applicant.”*

[16] In the present matter, the Applicant has failed to produce any evidence that the other members of the Applicant authorized the institution of the proceedings. There is no explanation proffered why only the Chairperson signed the Resolution, when the Applicant's Council consists of at least 10 members.

[17] The 4<sup>th</sup> and 8<sup>th</sup> Respondent's assertion that the proceedings are not authorized by Council is supported and strengthened by the fact that, Council members did not sign the Resolution, no attendance register is attached, no confirmatory affidavits are attached, to confirm the correctness of the papers and the Deputy Chairperson, being the

deponent to the Replying affidavit contradicts the Resolution which purports to be a Council Resolution by stating in the Replying Affidavit at paragraph 7.6.1 thereof as follows:-

*“The locus standi challenge brought by the Fourth Respondent on behalf of himself and the Eighth Respondent is bad in fact and law owing to the fact that by virtue of the office held by the Chairperson of the Applicant, the Chairperson is authorised to depose to affidavits in legal proceedings by and against the Applicant, and in an instance wherein the Chairperson is indisposed, I am also authorised to act as the Chairperson, and depose to affidavits on behalf of the Applicant, as I now do with regard to this replying affidavit.”*

[18] In my view, the Applicant failed to prove that the Legal Practice Council authorized the current proceedings and therefore the *point in limine* raised by the 4<sup>th</sup> and 8<sup>th</sup> Respondents should be upheld.

[19] Despite the *point in limine* having been upheld, I now proceed to deal with the merits of this matter as I deem it in the interest of justice and the parties concerned in this matter that this application for suspension be finalized. Also bearing in mind that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's conceded to the order for suspension being granted and further bearing in

mind that the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Respondents have not raised the issue of the fatally defective resolution as the 4<sup>th</sup> and 8<sup>th</sup> Respondents' have.

**The Background and Applicant's submissions:-**

[20] The 2<sup>nd</sup> to 8<sup>th</sup> Respondents were all directors, alternatively members, further alternatively salaried directors or employees of the 1<sup>st</sup> Respondent. The Applicant has received various complaints from members of the public who at different times had given instructions to the 1<sup>st</sup> Respondent which was at the time of receipt of instructions represented by its directors, to represent them in their separate claims for payment of compensation against the Road Accident Fund ("the RAF").

[21] The Applicant submits that as per the Applicant's standard procedure, all the complaints were sent to the Respondents using the email addresses that are on record with the Applicant but none of the Respondents responded thereto.

[22] The Applicant then referred the complaints to the Investigation Committee during May 2021 for consideration of the Respondents' conduct. The

Investigating Committee formulated charges against the directors of the 1<sup>st</sup> Respondent.

[23] The Applicant, upon recommendation of the Investigating Committee, referred the complaints to the Applicant's Disciplinary Committee for a hearing. The matter served before the Disciplinary Committee for a hearing on 22 June 2021. On that day some of the Respondents appeared, but the 2<sup>nd</sup> Respondent failed to appear as he was unwell. The matter could not proceed in the absence of the 2<sup>nd</sup> Respondent and was consequently postponed. The Respondents were ordered to respond to the correspondence from the Applicant.

[24] The Applicant contends that the complaints that were received are now more than 26 in number. According to the Applicant, the Respondents have simply not cooperated with the Applicant and have failed to provide their responses, client ledgers or pleas in response to these complaints. It is submitted that due to the Respondents' failure to cooperate with the Applicant, the process of compliance with Section 38 of the Legal Practice Act, 28 of 2014 ("the Act") has been affected negatively and delayed.

- [25] The Applicant further submits that in addition to these complaints, the RAF has submitted a complaint to the Applicant's sister office, the Gauteng Provincial Office of the South African Legal Practice Council. The RAF's complaint is that the 1<sup>st</sup> Respondent owes the RAF a total amount of R29 043 606.64, being money that was erroneously paid to the 1<sup>st</sup> Respondent as a duplicate payment.
- [26] On 2 September 2021, the Applicant addressed a letter to ABSA Bank, where the 1<sup>st</sup> Respondent's trust bank account is held, and asked for the signed transactions history of the said trust account for the period 1 June 2021 to 2 September 2021. On 3 September 2021, ABSA Bank furnished the Applicant with the requested trust bank account statements, as well as a trust account balance statement as at 2 September 2021. According to the trust bank account statement, the 1<sup>st</sup> Respondent's trust account balance was R5 545 013.84 on 1 September 2021.
- [27] It has furthermore also come to the Applicant's attention that an application for the liquidation of the 1<sup>st</sup> Respondent is pending under case number 4761/2021 before this court.

[28] It further came to the Applicant's notice that some of the payments were made by RAF to the Sheriff of this court. The Applicant has sought statements from the Sheriff reflecting payments received from RAF and made to the 1<sup>st</sup> Respondent in respect of some of the complaints.

[29] The Applicant contends that the payments made by the Sheriff to the 1<sup>st</sup> Respondent add up to R2 327 077.09. This amount is added to the RAF amount of R29 043 606.64 and adds up to a total amount of R31 370 683.73 that should be in the Respondents' trust account. This shows a trust deficit of at least R25 825 669.89 as the trust bank balance as at 3 September 2021 was only R5 545 013.84.

[30] The Applicant contends that the aforementioned facts point to the fact that the 2<sup>nd</sup> to 8<sup>th</sup> Respondents have not conducted themselves and their legal practice in a manner befitting a legal practitioner and certainly did not operate the trust account of the 1<sup>st</sup> Respondent in the manner that attorneys are required to operate their trust accounts.

[31] According to the Applicant, the Applicant has carefully and diligently considered all the facts available to it concerning the Respondents and have concluded that the Respondents have made themselves guilty of



unprofessional or dishonourable or unworthy conduct. The Applicant submits that the 2<sup>nd</sup> to 8<sup>th</sup> Respondents reveals character defects which cannot be tolerated in a legal practitioner or officer of the Court and does not meet the standard of behaviour and conduct which is required of an attorney and member of the honourable legal profession.

- [32] The Applicant submits that the conduct and behaviour of the 2<sup>nd</sup> to 8<sup>th</sup> Respondents have damaged and affected the good standing and reputation of the profession as a whole and they continue to do so. Consequently, it is submitted that the 2<sup>nd</sup> to 8<sup>th</sup> Respondents should be suspended from the practice of law.

**The 3<sup>rd</sup>, 5<sup>th</sup> and 9<sup>th</sup> Respondents:**

- [33] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submitted in opposition that the 1<sup>st</sup> Respondent, whilst the 3<sup>rd</sup> and 5<sup>th</sup> Respondents were involved, operated, primarily, as a law firm specializing in personal injury law, more specifically RAF matters. The 1<sup>st</sup> Respondent had 4 (four) offices, namely the Lephalale office, the Pretoria office, the Polokwane office and the Mafikeng office. These offices operated independently from each other, and the day-to-day operations of each office was not linked and/or related to any other office.

[34] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents were only involved in the running of the Pretoria and Mafikeng office, with the other Respondents being responsible for the Lephalale and Polokwane offices. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents only worked in, and received instructions, relating to RAF litigation, more specifically, pre-trial and trial litigation, i.e. they only worked on RAF files within the Pretoria and Mafikeng jurisdictional areas, once pleadings have closed. Most of the instructions were sent to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents from the Lephalale office.

[35] As far as the relationship between the 3<sup>rd</sup> and 5<sup>th</sup> Respondents and the 2<sup>nd</sup> Respondent is concerned, the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, submit that while technically “partners” of the 2<sup>nd</sup> Respondent (pursuant to a partnership agreement concluded on or about 2013) in the 1<sup>st</sup> Respondent, were never treated as such. They were never consulted in respect of any major decision affecting the 1<sup>st</sup> Respondent such as the taking out of loans. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents were not provided with the financial information and/or financial statements of the 1<sup>st</sup> Respondent.

[36] According to the 3<sup>rd</sup> and 5<sup>th</sup> Respondent, they did not have any control and/or insight into the 1<sup>st</sup> Respondent’s trust account and never received

any distributions and/or profit-sharing from the business operations of the 1<sup>st</sup> Respondent.

[37] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that when they became involved in the 1<sup>st</sup> Respondent with the 2<sup>nd</sup> Respondent, it was on the basis that the 1<sup>st</sup> Respondent would be a partnership. Accordingly, the 2<sup>nd</sup> Respondent, 3<sup>rd</sup> Respondent, 5<sup>th</sup> Respondent and 6<sup>th</sup> Respondent entered into a partnership agreement.

[38] During the course of 2014, and without the 3<sup>rd</sup> and 5<sup>th</sup> Respondents knowledge, the 2<sup>nd</sup> Respondent, unilaterally decided to incorporate the partnership as an incorporated company. No shareholder's agreement was entered into, and the 2<sup>nd</sup> Respondent simply issued them with shareholders certificates. There were no shareholder's meetings called by the 2<sup>nd</sup> Respondent, and the 3<sup>rd</sup> and 5<sup>th</sup> Respondents were never involved in the running of the 1<sup>st</sup> Respondent. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that for all intents and purposes they were ordinary salaried employees of the 1<sup>st</sup> Respondent – they were treated as such by the 2<sup>nd</sup> Respondent.

[39] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that this relationship, however, imploded during the course of late 2020, early 2021 as a result of the

disturbing conduct of the 2<sup>nd</sup> Respondent. During the course of December 2020/January 2021, the 3<sup>rd</sup> and 5<sup>th</sup> Respondents received two communications, one from ABSA Bank regarding an alleged loan taken out by the 2<sup>nd</sup> Respondent on behalf of the 1<sup>st</sup> Respondent and one from RAF regarding an alleged duplicate payment.

[40] Owing to the fact that the 3<sup>rd</sup> and 5<sup>th</sup> Respondents were completely unaware of the issues raised in the aforementioned correspondences, the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, as soon as possible called a partners meeting, which took place on 7 January 2021. The meeting was attended by the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

[41] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that during the meeting several issues were raised by the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, none of which the 2<sup>nd</sup> Respondent could answer satisfactorily or at all. These issues included the double payment made by RAF, the ABSA loan, complaints by clients regarding payments (which arose during October to December 2020) and the financial information (and situation) of the 1<sup>st</sup> Respondent's trust account, as well as the audited financial statements of the Applicant from 2013 to 2020.

[42] Owing to the fact that the 2<sup>nd</sup> Respondent could not provide the 3<sup>rd</sup> and 5<sup>th</sup> Respondents with any of the information sought and/or provide any reasonable explanations regarding the questions posed to him, the 3<sup>rd</sup> and 5<sup>th</sup> Respondent formally resigned from the 1<sup>st</sup> Respondent on 1 February 2021 with immediate effect.

[43] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that when they left the 1<sup>st</sup> Respondent, they transferred the active files which they were working on to a new firm established by the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, being the 9<sup>th</sup> Respondent. According to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, the 9<sup>th</sup> Respondent has been operating without issue since February 2021.

[44] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents further submit that after having resigned from the 1<sup>st</sup> Respondent, they attempted to ensure that the 2<sup>nd</sup> Respondent conducted the business in the ordinary course. However, when they attempted physically and by way of correspondence to ensure that the 2<sup>nd</sup> Respondent is attending to the business of the 1<sup>st</sup> Respondent in a manner as is expected from him, they were instructed by the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent's attorneys of record to desist from doing so.

- [45] It is submitted by the 3<sup>rd</sup> and 5<sup>th</sup> Respondents that in addition to the aforementioned steps taken by them, and in order to ensure that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were duly investigated relating to their concerns raised with the 2<sup>nd</sup> Respondent at the partners meeting on 7 January 2021, they also lodged a complaint with the Gauteng Provincial Office of the South African Legal Practice Council.
- [46] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents submit that the Applicant seeks to suspend them from practice for a period of 18 months, notwithstanding the fact that they have taken the above mentioned steps and that on their own they have also attempted to hold the 1<sup>st</sup> and 2<sup>nd</sup> Respondents accountable and tried to ensure that the business of the 1<sup>st</sup> Respondent was conducted properly. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents contend that they are fit and proper persons.
- [47] The 3<sup>rd</sup> and 5<sup>th</sup> Respondents further submitted that at the time of the disciplinary proceedings on 22 June 2021, neither the 3<sup>rd</sup> nor the 5<sup>th</sup> Respondents were directors of the 1<sup>st</sup> Respondent. They were not invited to the disciplinary proceedings either, nor were they represented at those proceedings.

[48] According to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, the 2<sup>nd</sup> Respondent intentionally kept them in the dark and their ignorance is not “professed” without any basis therefore. To the extent that they were not aware of the complaints, double payments and other irregularities, this was caused as a result of the intentional subterfuge of the 2<sup>nd</sup> Respondent.

**The 4<sup>th</sup> and 8<sup>th</sup> Respondents:**

[49] The 4<sup>th</sup> and 8<sup>th</sup> Respondents contend that no cause of action is made out and no case of wrong doing or unlawful conduct is established against them. The 4<sup>th</sup> and 8<sup>th</sup> Respondents were accordingly mis-joined to these proceedings.

[50] The 4<sup>th</sup> and 8<sup>th</sup> Respondents submit that the cause of action as per the Applicant’s founding affidavit is in relation to the handling of trust monies and/or financial impropriety. The provisions of Section 84 of the Legal Practice Act exonerate the 4<sup>th</sup> and 8<sup>th</sup> Respondents from the current proceedings.

[51] It was submitted that **Section 84 of the LPA** stipulates as follows:-

*“Every attorney or any advocate referred to in section 34(2)(b), other than a legal practitioner in the full-time employ of the South African Human*

*Rights Commission or the State as a state attorney or state advocate and who practices or is deemed to practice-*

*(a) For his or her own account either alone or in partnership; or*

*(b) As a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund Certificate.”*

[52] The 4<sup>th</sup> and 8<sup>th</sup> Respondents submit that they are not practicing for their own account or as partners in relation to the 1<sup>st</sup> Respondent. They are not directors of a juristic person either. It is therefore misplaced to incorporate or join the 4<sup>th</sup> and 8<sup>th</sup> Respondents in this current application especially when the cause of action is the handling of trust funds or misappropriation of funds.

[53] The 4<sup>th</sup> and 8<sup>th</sup> Respondents submit that they are salaried directors, employed by the 1<sup>st</sup> Respondent and in terms of their employment with the 1<sup>st</sup> Respondent they are not entitled to receive trust monies on behalf of or from members of the public.

[54] The 4<sup>th</sup> and 8<sup>th</sup> Respondents submit the misjoinder could have been prevented and avoided if the Applicant in terms of Section 87(1)(d) of the



LPA inspected the Trust Account of the 1<sup>st</sup> Respondent before instituting the current proceedings.

[55] The 4<sup>th</sup> and 8<sup>th</sup> Respondents contend that they were joined in these proceedings in terms of paragraph 2 of the Applicant's founding affidavit and the Applicant does not take it further by establishing whether or not Section 34(7) of the LPA does apply to them.

[56] According to the 4<sup>th</sup> and 8<sup>th</sup> Respondents, the provisions of Section 34(7) are not applicable to them based on the following:-

- (a) They are not and have never been shareholders, partners or members of the 1<sup>st</sup> Respondent;
- (b) They have no access to the 1<sup>st</sup> Respondent's Trust, Business, Deceased Estate funds, Investments accounts and Client Ledger Accounts.
- (c) They are not signatories to any of such accounts.

[57] The 4<sup>th</sup> and 8<sup>th</sup> Respondents further contend that paragraph 5.5 of the Applicant's Founding Affidavit outlines sets of complaints against the Respondents, but it is important to note that none of these complaints

implicates them or connect them to the handling of Trust Funds and/or misappropriation of funds.

[58] It is submitted by the 4<sup>th</sup> and 8<sup>th</sup> Respondents that in the result, the application against them contains unsubstantiated legal conclusions which are meaningless without supporting factual evidence and therefore has no probative value and should the application be dismissed with costs in favour of the 4<sup>th</sup> and 8<sup>th</sup> Respondents.

[59] The 4<sup>th</sup> and 8<sup>th</sup> Respondents further submit that during about June 2021, Ms. Buthane, an Administrator at the Lephalale office brought to the 4<sup>th</sup> Respondent's attention the contents of an invitation to appear before a Disciplinary Committee of the LPC on the 22<sup>nd</sup> of June 2021. It appeared from the invitations that only the 2<sup>nd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents were invited. It later transpired that all the complaints related to failure to pay clients timeously and failing to respond to correspondence from the Applicant.

[60] According to the 4<sup>th</sup> and 8<sup>th</sup> Respondents, a ruling was made at the disciplinary hearing, *inter alia*, that:-

(a) The matter be postponed;

- (b) The 2<sup>nd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents should respond to all the complaints;
- (c) All these matters are not referred back to the Investigating Committee since the Disciplinary Committee is now seized with same;
- (d) The Applicant should furnish the Respondents with the full bundle of documents that are before the Disciplinary Committee in order for them to respond;
- (e) Since Adv. Maphutha had attended physically at the Applicant's premises, it was ruled that he be given a soft copy of the bundle via email;
- (f) Client Ledger accounts relating to the 7 (seven) Complaints must be submitted to the Applicant;
- (e) The Respondents to pay the costs.

[61] The 4<sup>th</sup> Respondent submits that now that he has had sight of the complaints as attached to this application, it is disingenuous for the Applicant not to refer in detail to its own Disciplinary Committee hearing held on the 22<sup>nd</sup> of June 2021. His submission is based on the fact that despite that *ex facie* the complaints, the 4<sup>th</sup> and 8<sup>th</sup> Respondents are not a subject of the complaints, the Applicant was informed on that day that the

only person that could assist the Committee, by implication the Applicant, was the 2<sup>nd</sup> Respondent.

- [62] The 4<sup>th</sup> Respondent's submission is further based on the fact that, despite the fact that Counsel was briefed to apply for postponement, the Applicant could have sought that the 4<sup>th</sup> Respondent, together with the 7<sup>th</sup> and 8<sup>th</sup> Respondents should answer to the charges and the complaints as they were in attendance. This did not happen.

**The 6<sup>th</sup> Respondent:**

- [63] The 6<sup>th</sup> Respondent submits that he was admitted as an attorney on the 27<sup>th</sup> of July 2004. He joined the 1<sup>st</sup> Respondent as a professional assistant on the 1<sup>st</sup> of October 2008. He was subsequently appointed as a director on the 30<sup>th</sup> of April 2011 and had a shareholding of 4% in the firm.
- [64] The 6<sup>th</sup> Respondent submits that on his appointment, he exclusively dealt with litigation in the firm and was stationed in Limpopo. The affairs of the firm were handled or managed by the managing director, the 2<sup>nd</sup> Respondent, herein.

[65] According to the 6<sup>th</sup> Respondent he and his team, consisting of junior attorneys, would handle matters from summons stage to close of pleadings in respect of all the matters in the firm. The litigation concerned Polokwane High Court matters, and they dealt with those matter up to completion stage. Once the matter became settled, they would send the court orders to the firm's finance department and ultimately to the Pretoria branch for taxation and payment facilitation where they were centralized. Payments to clients in respect of matters with partial or full capital settlements were handled by the 2<sup>nd</sup> Respondent with assistance of the finance department.

[66] According to the 6<sup>th</sup> Respondent, he did not have any financial control of the 1<sup>st</sup> Respondent. The issue concerning payments of clients were dealt with by the relevant financial officer being the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent was also the Chief Financial Officer of the firm. During his employment and period as director of the 1<sup>st</sup> Respondent he was only responsible for litigation of matters, which was his only duties.

[67] The 6<sup>th</sup> Respondent submits that he left the 1<sup>st</sup> Respondent on the 1<sup>st</sup> of February 2021 due to non-payment of his salary. The 6<sup>th</sup> Respondent

also effected his resignation at the Companies and Intellectual Property Commission on the 1<sup>st</sup> of February 2021.

[68] On the 10<sup>th</sup> of February 2021, the 6<sup>th</sup> Respondent registered his own law firm with the Companies and Intellectual Property Commission at which firm he is currently practicing.

[69] The 6<sup>th</sup> Respondent submits that he had the utmost good faith and trust in the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent's audit reports always came through unqualified and fidelity fund certificates were always issued to them. In the circumstances, the 6<sup>th</sup> Respondent believed and assumed that all was run well in so far as the firm's finances were concerned. There was no need to request to see and/or access the trust account.

[70] The 6<sup>th</sup> Respondent submits that the current application is premised on his position as a former director, only. It is not premised on the basis that he personally did something wrong except to say, *prima facie*, something wrong occurred while he was a director.

[71] The 6<sup>th</sup> Respondent further submits that it is inarguable that his liability for debts as a former director of the 1<sup>st</sup> Respondent is established, but this

liability for debt does not extend to the relief sought by the Applicant on the papers.

[72] The 6<sup>th</sup> Respondent accepts that once a duty to pay a debt as a former director arise, he will likely be liable to pay the debts which arose while he was a director, but what is vehemently denied is the idea that he has conducted himself improperly in relation to the trust. The 6<sup>th</sup> Respondent submits he did not know anything concerning the trust and did not control the trust.

[73] It is submitted by the 6<sup>th</sup> Respondent that beyond being a director, the Applicant must say he personally knew something or participated in something wrong and therefore his suspension is necessary to achieve an investigation which the LPC envisages.

[74] The 6<sup>th</sup> Respondent submits that on the facts, the Applicant failed to suggest or prove that the 6<sup>th</sup> Respondent did something wrong, except to say he was a director, which is simply not enough.

**The 7<sup>th</sup> Respondent:**

- [75] The 7<sup>th</sup> Respondent submits that she joined the 1<sup>st</sup> Respondent on 21 August 2017. She was appointed as “Director Core Business”. In this respect she was responsible for the smooth running of the 1<sup>st</sup> Respondent in terms of making sure that the litigation processes are aligned with the litigation strategy of the 1<sup>st</sup> Respondent, managing the performance of the attorneys as well as ensuring synergy between the work of the attorneys/professional staff and that of the support staff.
- [76] The 7<sup>th</sup> Respondent submits that in this role she had no access whatsoever to either the trust or business accounts of the 1<sup>st</sup> Respondent. She was therefore a salaried director with clear roles and responsibilities. She is neither a shareholder, member nor partner as contemplated in Section 34(7) of the Legal Practice Act, 28 of 2014. The 7<sup>th</sup> Respondent further submits that she was not in control of the 1<sup>st</sup> Respondent’s financial affairs.
- [77] The 7<sup>th</sup> Respondent submits that the financial affairs of the 1<sup>st</sup> Respondent was handled by the 2<sup>nd</sup> Respondent. Everything she knows about the financial affairs of the 1<sup>st</sup> Respondent is from hearsay.



- [78] According to the 7<sup>th</sup> Respondent, the 1<sup>st</sup> Respondent had its trust account audited on an annual basis. Such audited financial statements were submitted to the LPC and it is on the strength of which she and the other directors received Fidelity Fund Certificates.
- [79] The 7<sup>th</sup> Respondent submits that she labored under the impression that their Fidelity Fund Certificates were issued pursuant to the LPC's interrogation of such audited financial statements, and simply not as a rubber stamp exercise. Had the audited financial statements revealed dishonest conduct or a misappropriation of funds, then the LPC would not have issued the directors of the 1<sup>st</sup> Respondent with such Fidelity Fund Certificates. Accordingly, she had no reason to suspect that there was anything untoward, as alleged by the Applicant.
- [80] In addition, the 7<sup>th</sup> Respondent submits that the mere fact that she had been issued with a Fidelity Fund Certificate does not automatically put her in charge of the financial affairs of the 1<sup>st</sup> Respondent, including its trust account. It simply put her in a position to be able to do so, had the 2<sup>nd</sup> Respondent become incapacitated or unable to perform his functions. The true state of affairs remained that she was not in control of the trust account of the 1<sup>st</sup> Respondent.

[81] The 7<sup>th</sup> Respondent further submits that at the end of May 2021, she became aware that the 1<sup>st</sup> Respondent's clients had lodged complaints against it and that a disciplinary hearing was already scheduled to take place on the 22<sup>nd</sup> day of June 2021, which hearing was to be held virtually. She attended the hearing virtually, as did the 4<sup>th</sup> and 8<sup>th</sup> Respondents, represented by Advocate Maphutha.

[82] According to the 7<sup>th</sup> Respondent, Adv. Maphutha submitted at the disciplinary hearing that the 2<sup>nd</sup> Respondent could not be present, as he was ill. Adv. Maphutha proceeded to apply for a postponement on the grounds that the disciplinary inquiry primarily was to be conducted in relation to the duties associated with the 2<sup>nd</sup> Respondent's role in the firm. The 7<sup>th</sup> Respondent submits that she personally could not be of any assistance to the disciplinary inquiry. These submissions were not refuted or challenged by the LPC.

[83] It is further submitted by the 7<sup>th</sup> Respondent that the current proceedings are grounded on an urgent basis for a suspension – under circumstances which according to her, it is not necessary for the Applicant to bring this application for her suspension to achieve the purpose of investigating the

1<sup>st</sup> Respondent. She submits that she has already shown that she is not in control of the trust account and that she is not an equity director. It is further not explained by the Applicant on what basis will her continued practice and enrolment as an attorney interfere with the intended investigation of the Applicant.

- [84] The 7<sup>th</sup> Respondent further submits that the balance of convenience does not favour the suspension precisely because the Applicant does not tell this court how her suspension will assist with the intended investigation. She submits that the version put before this court, is sufficient to show that no order for suspension should be made against her. The 7<sup>th</sup> Respondent reiterates to state that she has never been in control of the trust account and she only remained as a salaried director, with restricted responsibilities in the firm.

**The Law:**

- [85] The LPC is empowered under **section 40(3)(a)(iv) read with section 44(1) of the Act**, to launch an application for the striking off the roll or suspension from practice of a legal practitioner. If the court is satisfied that the legal practitioner is not a fit and proper person to continue to practice, the provisions of the Act “do not derogate in any way from the power of

the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.

[86] It is trite that an application of this nature constitutes a disciplinary inquiry by the court into the conduct of the practitioner concerned. These proceedings do not constitute ordinary civil proceedings but are in their nature *sui generis* with the LPC fulfilling the role of *amicus curiae*. Accordingly, the LPC is not an ordinary litigant in this application. As *custos morum* of the profession, the LPC places the facts and its views for this court to take appropriate action in the exercise of its discretion using its disciplinary powers. Significantly, the court's power is inherent in nature over and above the provisions of the Act. See ***Law Society of the Transvaal v Tloubatla* [1999] 4 All SA 59 (D); *Law Society of the Transvaal v Machaka and Others (No 2)* 1998 (4) SA 413 (T) and *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A).**

[87] In considering the evidence before it, the court is not bound by the views of the LPC. However, the LPC is not an ordinary litigant. It brings the matter to court in its capacity as both the statutory *custos morum* of the legal profession, those practising at the side bar, and protector of the

public in their dealings with that profession. Due weight should accordingly be given to its views. See ***Solomon v Law Society of the Cape of Good Hope* 1934 AD 401 at 409.**

[88] In ***South African Legal Practice Council v Chalom* (18445/2020) [2020] ZAGPPHC 663 (26 November 2020)** at paragraph 16 to 18 Mudau J held as follows:

*“[16] In exercising its discretion, the court embarks upon a three-stage inquiry. The first inquiry is for the court to decide whether the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry. Once the court is satisfied that the offending conduct has been established, the second inquiry is whether the practitioner concerned is a fit and proper person to continue to practise. This inquiry entails a value judgment, which involves the weighing up of the conduct complained of against the conduct expected of an attorney. If the court holds the view that, the practitioner is not a fit and proper person to practise as an attorney, the third inquiry is whether in all the circumstances, the practitioner in question is to be removed from the roll of attorneys or whether an order suspending him from*

*practice for a specified period will suffice. This will depend on factors such as the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately, this is a question of degree. In deciding whether an attorney ought to be removed from the roll or suspended from practice, the court is not primarily imposing a penalty. The main consideration is the protection of the public.*

[17] *A legal practitioner is expected to scrupulously observe and comply with the provisions of the Act, the Rules promulgated thereunder and the Code of Conduct. The respondent is a member of a learned, respected and honourable profession and by entering, upon taking the oath, he pledged himself with total and unquestionable integrity to society, to the courts and to the profession.*

[18] *The courts and the LPC have a duty to act where a legal practitioner's conduct falls short of what is expected and to curb the erosion of values in the profession. The protection of the public goes hand in hand with a court's obligation to protect the integrity of*

*the courts and the legal profession. Public confidence in the legal profession and in the courts is undoubtedly undermined when the strict requirements for membership to the profession are weakened.”*

**Application of the law to the facts:**

[89] In embarking upon the three-stage enquiry, I cannot find that offending conduct has been established on a preponderance of probabilities against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents.

[90] According to the Applicant's affidavit, the purpose of this application is to suspend the 2<sup>nd</sup> to 8<sup>th</sup> Respondents pending the finalization of investigations into their conduct and disciplinary proceedings against them.

[91] It should however be mentioned that a preliminary investigation has already been done in respect of the complaints received by the LPC relating to the conduct of the Respondents. Despite the investigation and the recommendation by the LPC in the minutes of the committee meeting held on 31 August 2021, and despite the investigating committee having found that according to them the complaints and investigation constitutes

*prima facie* evidence which is sufficient that the 1<sup>st</sup> Respondent and all those who were its directors at the time of the commission of the misconducts which gave rise to all these complaints, are guilty of misconducts, not one single misconduct or complaint was alleged or proved against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents directly.

[92] Each and every complaint attached to the Applicant's Founding Affidavit is addressed to the 2<sup>nd</sup> Respondent and relates in essence to the 1<sup>st</sup> Respondent, alternatively the 2<sup>nd</sup> Respondent. The extremely general allegations of the Applicant do not at all refer to the 3<sup>rd</sup> to 8<sup>th</sup> Respondents.

[93] The Applicant applies for the suspension of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents merely on the basis that they were at one stage directors of the 1<sup>st</sup> Respondent, alternatively members of the 1<sup>st</sup> Respondent, further alternatively it seems, associated with the 1<sup>st</sup> Respondent. In my view, the Applicant has failed to pass the first stage of the enquiry against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents and there is therefore no need to proceed to the second and third stages of the enquiry.

[94] As the application of the Applicant is one of an interim interdict to be granted, the Applicant further, in my view, also had to satisfy the



requirements of an interim interdict. The Applicant has failed to present any evidence of irreparable harm being caused by the 3<sup>rd</sup> to 8<sup>th</sup> Respondents if they were to be permitted to continue practicing as attorneys. In circumstances where the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have consented to an order suspending the 2<sup>nd</sup> Respondent from practicing and having the trust account placed under the control of the Applicant there can be no harm to the public relating to the un-investigated complaints before the court.

[95] The Applicant has furthermore not presented any evidence that the balance of convenience favours the Applicant where it has not made specific allegations or conducted an investigation specifically relating to the 3<sup>rd</sup> to 8<sup>th</sup> Respondents.

[96] No case was made out that the Applicant does not have an alternative remedy either. In my view, the opposite is true, the Applicant allege to have initiated an investigation process and commenced disciplinary proceedings. These disciplinary proceedings have not been completed. In my view, in this present matter, the Applicant was pre-mature in bringing this urgent application against the 3<sup>rd</sup> to 8<sup>th</sup> Respondents without

having at least established offending conduct on the part of the 3<sup>rd</sup> to 8<sup>th</sup> Respondents specifically, first.

[97] In the result the application issued by the Applicant can only succeed in so far as it relates to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have consented to the order being granted against them.

[98] As the application stands to be dismissed against the 4<sup>th</sup> and 8<sup>th</sup> Respondents as well, I will therefore not make an order in respect of the *point in limine* raised by the 4<sup>th</sup> and 8<sup>th</sup> Respondents here above, although my view has been expressed in this judgment in respect of the defective resolution.

**Costs:**

[99] The only issue remaining to be determined is costs. The 3<sup>rd</sup>, 5<sup>th</sup>, and 9<sup>th</sup> Respondents apply that the application be dismissed with costs. The 4<sup>th</sup> and 8<sup>th</sup> Respondents apply in their answering affidavit that the application be dismissed with costs on an attorney and client scale, but in the 4<sup>th</sup> and 8<sup>th</sup> Respondent's Heads of Argument it was stated that no order as to costs should be made. Similarly, the 6<sup>th</sup> and 7<sup>th</sup> Respondents apply that the application be dismissed with costs.

[100] The purpose of an award of costs to a successful litigant is to indemnify him for the expense to which he has been put through having been unjustly compelled to initiate or defend litigation, as the case may be. The award of costs is a matter wholly within the discretion of the court, but this is a judicial discretion and must be exercised on grounds upon which a reasonable person could have come to the conclusion arrived at.

[101] In leaving a judge with a discretion, the law contemplates that he should take into consideration the circumstances of each case, carefully weighing the various issues in the case, the conduct of the parties and any other circumstances which may have a bearing upon the question of costs and then make such order as to costs as would be fair and just between the parties.

[102] Even the general rule, that costs follow the event, is subject to the overriding principle that the court has a judicial discretion in awarding costs.

[103] In the present matter, the Applicant is not an ordinary litigant in this application. The Applicant acts as *custos morum* of the profession, and

places the facts and its views for this court to take appropriate action in the exercise of its discretion using its disciplinary powers.

[104] However, the fact that the Applicant brought this application as *custos morum*, does not give the Applicant an umbrella protection against a cost order, especially where for example in this present application, the Applicant rushed to court in an application against the 3<sup>rd</sup> to 9<sup>th</sup> Respondents without having placed any facts relating to the 3<sup>rd</sup> and 9<sup>th</sup> Respondents' conduct before court.

[105] The Applicant has been represented by senior counsels and senior counsels have deposed to the affidavits. Acting as *custos morum* of the profession, the Applicant should have taken extra care before bringing this application or any other application of this nature to court. It can hardly be said that the Applicant acted reasonably in the present application.

[106] It was pertinently argued by Counsel for the Applicant that the Applicant needs to protect the fiscus and the profession, but in contradiction, the Applicant brought this application pre-maturely and without any reasonable grounds or substantiated facts against the 3<sup>rd</sup> to 9<sup>th</sup> Respondents. In the same breath, the Respondents should also be

protected against the Applicant who abused its powers and the court process in bringing this application on an extremely urgent basis. The Applicant did not even institute these proceedings with proper authority, alternatively a proper resolution by the board members.

[107] In the result there is no reason why the Applicant should not be ordered to pay the costs of the 3<sup>rd</sup> to 9<sup>th</sup> Respondents on a party and party scale.

[108] The Applicant has however been successful in respect of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and therefore, I am of the view that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should be liable to pay the Applicant's costs of this application in so far as the application relates to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The 2<sup>nd</sup> Respondent has consented to the order being granted from the onset and is attorney and client costs therefore not justifiable in the present instance.

[109] I therefore make the following order:-

1. The 2<sup>nd</sup> Respondent is suspended from practicing as an attorney for a period of 12 months pending the finalisation of investigations into his conduct and disciplinary proceedings against him.

2. The 2<sup>nd</sup> Respondent is ordered to hand over and deliver his certificate of enrolment as legal practitioner to the Registrar of this Court within 7 days from date of this order.
3. In the event of the 2<sup>nd</sup> Respondent failing to comply with the terms of this order granted in prayer 2 here above, within 7 days from the date of this order, the Sheriff of the district in which the 2<sup>nd</sup> Respondent's certificate of enrolment is, is authorised and directed to take possession of the said certificate and to hand it to the Applicant.
4. The 2<sup>nd</sup> Respondent is prohibited from handling or operating on the 1<sup>st</sup> Respondent's trust account.
5. The Director of the Limpopo Provincial Council of the Applicant, Khomotso Matsaung, or any person nominated by her, is appointed as *curator bonis* to administer and control the trust accounts of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the 2<sup>nd</sup> Respondent's practices as legal practitioner and

including the separate banking accounts opened and kept by the 2<sup>nd</sup> Respondent at any bank in the Republic of South Africa in terms of Section 86(1) and (2) of Act 28 of 2014 and/or any separate savings or interest-bearing trust accounts as contemplated by Section 86(3) and/or 86(4) of Act No. 28 of 2014, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said subsections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:-.

- 5.1 immediately to take possession of the 2<sup>nd</sup> Respondent's accounting records, records, files and documents as referred to in prayer 6 hereunder and subject to the approval of the board of control of the Legal Practitioners Fidelity Fund (hereinafter referred to as the Fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the 2<sup>nd</sup> Respondent was acting at the date of this order;
- 5.2 subject to the approval and control of the board of control of the Fund and where monies had been paid incorrectly and unlawfully

from the undermentioned trust accounts, to recover and receive and, if necessary in the interest of persons having lawful claims upon the trust account(s) and/or against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in respect of monies held, received and/or invested by the Respondents in terms of Section 86(1) and (2) and/or Section 86(3) and/or Section 86(4) of Act 28 of 2014 (hereinafter referred to as “trust monies”), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the 2<sup>nd</sup> Respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

- 5.3 to ascertain from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ accounting records the names of all persons on whose account the 1<sup>st</sup> and 2<sup>nd</sup> Respondents appear to hold or to have received trust monies (hereinafter referred to as “trust creditors”) and to call upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to furnish her, within 30 (thirty) days of the date of service of this order or such further period as she may agree to in writing, with the names, addresses and amounts due to all trust creditors;



- 5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as she may require to enable her, acting in consultation with, and subject to the requirements of, the board of control of the Fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondents 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 board of control of the Fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditor's right of access to the civil courts;
- 5.6 having determined the amounts which she considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the Fund;
- 5.7 in the event of there being any surplus in the trust account(s) of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents after payment of the admitted claims of all trust 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 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondents, the costs, fees and expenses referred to in prayer 10 hereunder, or such portion thereof as has not already been separately paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the Applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the Fund, to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, if she is solvent, or, if 1<sup>st</sup> and 2<sup>nd</sup> Respondents are insolvent, to the trustee(s) of 1<sup>st</sup> and 2<sup>nd</sup> Respondents' insolvent estates;

- 5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in accordance with the available documentation and information, to pay in full the claims of trust 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 trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Legal Practitioners Fidelity Fund;

- 5.9 subject to the approval of the chairman of the board of control of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist her in carrying out her duties as curator; and
- 5.10 to render from time to time, as curator, returns to the board of control of the Fund showing how the trust account(s) of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has/have been dealt with until such time as the board notifies her that she may regard her duties as curator as terminated.
6. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents immediately deliver their accounting records, records, files and documents containing particulars and information relating to:
- 6.1 any monies received, held or paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for or on account of any person while practising as an attorney;

- 6.2 any monies invested by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in terms of Section 86(3) and/or Section 86(4) Act 28 of 2014;
- 6.3 any interest on monies so invested which was paid over or credited to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;
- 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
- 6.5 any insolvent estate administered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
- 6.6 any trust administered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

- 6.7 any company liquidated in terms of the Companies Act, No 61 of 1973 read together with the provisions of the Companies Act No 71 of 2008, administered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as or on behalf of the liquidator;
- 6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as or on behalf of the liquidator; and
- 6.9 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' practices as legal practitioners of this Court, to the curator appointed in terms of prayer 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall be entitled to have reasonable access to them but always subject to the supervision of such curator or her nominee.
7. Should the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents fail to comply with the provisions of the preceding paragraph of this order on service thereof upon them or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents (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. That 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 had 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 prayer 8.1 to provide any such documentation or information which she may consider relevant in respect of a claim or possible or anticipated claim, against her and/or the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and/or the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' clients and/or the Fund in respect of money and/or other property entrusted to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

- 8.3 publish this order or an abridged version thereof in any newspaper she considers appropriate; and
  - 8.4 wind-up the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's practices in the event she considers it appropriate.
9. The 2<sup>nd</sup> Respondent is hereby removed from office as –
- 9.1 executor of any estate of which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have been appointed in terms of Section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in Section 72(1);
  - 9.2 curators or guardians of any minor or other person's property in terms of Section 72(1) read with Section 54(1)(a)(v) and Section 85 of the Administration of Estates Act, No 66 of 1965;
  - 9.3 trustees of any insolvent estate in terms of Section 59 of the Insolvency Act, No 24 of 1936;

- 9.4 liquidators of any company in terms of Section 379(2) read with Section 379(e) of the Companies Act, No 61 of 1973 and read together with the provisions of the Companies Act, No 71 of 2008;
  - 9.5 trustees of any trust in terms of Section 20(1) of the Trust Property Control Act, No 57 of 1988;
  - 9.6 liquidators of any close corporation appointed in terms of Section 74 of the Close Corporations Act, No 69 of 1984; and
  - 9.7 administrators appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944;
10. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are hereby ordered and directed to:
- 10.1 pay in terms of Section 87(2) of Act No. 28 of 2014, the reasonable costs of the inspection of the accounting records of the Respondents;



- 10.2 pay the reasonable fees of the auditor engaged by Applicant;
  - 10.3 pay the reasonable fees and expenses of the curator, including travelling time;
  - 10.4 pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid; and
  - 10.5 pay the expenses relating to the publication of this order or an abbreviated version thereof.
11. If there are any trust Funds available the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents 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 them (1<sup>st</sup> and 2<sup>nd</sup> Respondents) in respect of their (former) legal practices, and should she fail to do so, she shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights

(if any) as she may have against the trust creditor(s) concerned for payment or recovery thereof.

12. A certificate issued by a director of the Legal Practitioners 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.

13. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall during the period of suspension (12 months from date of this order) comply with the provisions of Sections 84(1) and 85 of the Legal Practice Act No. 28 of 2014.

14. The application against the 3<sup>rd</sup> to 9<sup>th</sup> Respondents is dismissed.

15. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are ordered to pay the costs of this application in so far as this application relates to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, only.

16. The Applicant is ordered to pay the costs of the 3<sup>rd</sup> to 9<sup>th</sup> Respondents.

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**M. NAUDÉ**  
**ACTING JUDGE OF**  
**THE HIGH COURT**

**APPEARANCES:**

**HEARD ON: 12 OCTOBER 2021**

**JUDGMENT DELIVERED ON: 25 OCTOBER 2021**

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