

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

REPUBLIC OF SOUTH AFRICA



CASE NO: 44215/18

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

HLANGANANI SAMUEL SHIRINDA

RESPONDENT

REASONS FOR JUDGEMENT

LUKHAIMANE AJ:

1. This matter was before court as an application for the suspension of the Respondent from practice as a legal practitioner, alternatively, for the removal of his name from the roll of legal practitioners.
2. The matter was heard on 17 November 2020. The Respondent was not in court for the hearing. Judgement was granted in favour of the Applicant for

an order suspending the Respondent from practice as a legal practitioner for a period of one year.

3. The Respondent now seeks reasons for the judgement.
4. The Respondent was admitted and enrolled as an attorney of this Honourable Court on 13 August 1998. He has been practicing as a sole practitioner since 1 January 2004.
5. It is the Applicant's contention that the Respondent failed to lodge unqualified audit reports for the periods ending 28 February 2016 and 28 February 2017, in contravention of Rule 70.3 and Rule 70.4 of the Applicant's old Rules.
6. Further that the Respondent was not issued with Fidelity Fund certificates for the years commencing January 2017 and January 2018. Therefore, the Respondent was not entitled to practice for reward and did so in contravention of section 41(1) and 41(2) of the Attorney's Act (Act No. 53 of 1979).

Point in Limine

7. The Respondent requests that condonation for the late filing of the Applicant's replying affidavit be denied and the matter be dismissed on that fact alone.
8. This request was denied as the replying affidavit did not raise any new issues and there is an explanation for such late filing, which the court finds acceptable and reasonable. More importantly, the Respondent could not show any prejudice that he would suffer, if such replying affidavit is admitted.
9. Therefore the *point in limine* was dismissed.

Merits

10. A legal practitioner must scrupulously comply with the provisions of the Legal Practice Act (Act 28 of 2014), the Attorneys Act and the Rules for the Attorneys Profession especially in relation to the money of a client which is placed into his/her custody and control.¹ Trust money does not form part of

¹ Holmes v Law Society of the Cape of Good Hope and Another, Law Society of Cape of Good Hope v Holmes 2006 (2) SA 139 (c) at 152 B – F

the assets of a legal practitioner. The very essence of a trust fund is the absence of risk and the confidence created thereby. The unjustifiable handling of trust money is totally untenable and not only frustrates the legal requirements relating to trust money but also undermines the principle that a trust account is completely safe in respect of money held therein by a legal practitioner on behalf of another person.

11. A legal practitioner is a member of a learned, respected and honourable profession and, by entering it, he/she pledges himself/herself with total and unquestionable integrity to society at large, to the courts and to the profession.
12. The law expects from legal practitioner *uberrima fides*, the highest possible degree of good faith in his dealings with his client, which implies that at all times his submissions and representations to client must be accurate, honest and frank.
13. The Respondent admits that he failed to submit audit reports and therefore practices without a Fidelity Fund certificate for a considerable period of time. Having practiced for a period of almost fifteen years, he practised

without the necessary papers for a period of three (3) years – an infringement he is well aware of and does not dispute.

14. It is the responsibility of every legal practitioner to comply with the provisions of the Legal Practice Act, the Attorneys Act and the Rules of the attorney profession. Such legal practitioner must always prefer the interest of his/her clients above his/her own and must exercise the highest degree of good faith in his/her dealings with his/her clients.
15. The Respondent's submission is that he was failed by his secretaries and colleagues that did not assist him with the submission of his audit reports as he could not do so himself due to being computer illiterate and residing in a rural area.
16. The Respondent also raised another procedural issue in that he contends that the Applicant should have exhausted its internal disciplinary procedures prior to instituting proceedings against him. This point is without merit as applications of this nature are *sui generis* and of a disciplinary nature.² The Respondent has no entitlement to any internal disciplinary hearing as it is the court's place to exercise its disciplinary powers over truant practitioners. The

² Hassim v Incorporated Law Society Natal 1977 (2) SA 757 (A) at 767 C - G

court will act independent of the Applicant's resolution as it must exercise its own discretion on the facts.³

17. The Respondent's assertions are without merit. The Respondent accepts that he has contravened the Attorneys Act, Legal Practice Act and Applicant's rules. The Respondent's attempt to rely on being a so called rural attorney is without merit. His alleged attempts to comply with the requirements fall far short of what is required of someone in his position who is well aware of the implications of practising without a Fidelity Fund certificate.

18. The Respondent's conduct constitutes unprofessional and/or dishonourable conduct on his part and a deviation from the standards of professional conduct required of every legal practitioner.



M A LUKHAIMANE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

³ Summerley v Law Society Northern Provinces 2006 (5) SA 613 (SCA) at 615 B - F

I AGREE AND IT IS SO ORDERED

A handwritten signature in black ink, appearing to read 'Selby Baqwa', is written over a horizontal line. To the left of the signature, the letters 'pp' are handwritten.

SELBY BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Appearances:

On behalf of the Applicant	:	Ms SL Magardie
Instructed by	:	Damons Magardie Richardson Attorneys
On behalf of the Respondent	:	Shirinda Attorneys
Instructed by	:	S Shirinda
Date of hearing	:	17 November 2020
Date of judgment	:	3 February 2021