



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

CASE NUMBER: 518/20

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
 (3) REVISED

08 JUNE 2021
 DATE

Lehapi
 SIGNATURE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

And

TOTOLO LEHUMO PAUL MASHA

FIRST RESPONDENT

ESEU NKE MSIZA

SECOND RESPONDENT

PAUL MASHA INCORPORATED ATTORNEYS

THIRD RESPONDENT

(Registration number, 2004/008540/21)

JUDGMENT

TLHAPI J

INTRODUCTION

[1] The applicant is a regulatory body which has jurisdiction over the affairs of all legal practitioners in the Republic of South Africa. The applicant was established in terms of section 4 of the Legal Practice Act No. 28 of 2014 ("the LPA"). The first and second respondents are directors and legal practitioners in the third respondent incorporated firm of attorneys. The first and second respondent were enrolled and admitted as members of the applicant during 1999 and 2003 respectively. They are permitted upon registration to function only under the auspices of the applicant and as contemplated in the LPA. Since the conduct complained about preceded the coming into operation of the LPA on 1 November 2018, section 119 (3) thereof provides that anything 'done in terms of a law repealed or amended by the Act and if it is consistent with the LPA, is valid and is deemed to have been done in terms of the corresponding provision of the LPA.

[2] Pursuant to complaints received against the respondents, the applicant launched an urgent application on 9 January 2020, against the first and second respondent for their removal alternatively, their suspension pending their removal as attorneys from the roll of legal practitioners. According to the applicant, the conduct complained about posed a risk to the respondents' trust creditors and to the Legal Practitioners Fidelity Fund. The latter Fund was created for the purpose of reimbursing persons who suffered pecuniary loss as a result of the misappropriation of trust funds by the legal practitioner. In terms of section 85 of the LPA a legal practitioner is obliged to be in possession of a Fidelity Fund Certificate, which is issued annually and is valid until 31 December of the year of issue. The Fidelity Fund Certificate is issued on the basis of an unqualified auditor's report and the said report relates to the financial year ending immediately prior to the application by a legal practitioner for such certificate.

[3] The applicant contended that the respondents were guilty of unprofessional or dishonourable conduct and, consequently, that they were not fit and proper persons to continue to practice as legal practitioners. The respondents conceded that the application was urgent and opposed the application only to the extent of the relief sought in prayer 1.2, which was for their removal from the roll of legal practitioners without a proper audit of the trust

account of their firm.

BACKGROUND

COMPLAINTS

[4] The applicant contended that the complaints received against the first and second respondents were in contravention of the Attorneys Act, the LPA, the Code of Conduct, the Legal Practice Council Rules (LPC) and the Rules of the Attorneys Profession. An investigation was consequently launched into the conduct of the affairs of the firm and, the applicant also relied on the report subsequently produced, which supported the complaints as basis for the charges against the respondents. The investigations were conducted by Mr Swart ("Swart"), a chartered accountant who conducts investigations for the applicant's Risk and Compliance Unit. At his first attempt to obtain the accounting records of the firm, the respondents reported that there was an armed robbery and they had lost the accounting records. They undertook to endeavour to obtain the records from their auditor or alternatively to reconstruct such records.

[5] When there was a delay in producing the records, Swart made effort to contact the respondents to no avail. He also reported that the respondents had failed to cooperate with a person authorised by the applicant to inspect the respondents' trust account. It was contended that there was reluctance to avail the accounting records on the part of the respondents. In fact the attempt by Swart to conduct an investigation and to appoint Mr Van Staden of the applicant's Risk and Compliance Unit was not well received by the respondents. They had indicated that they were seeking legal advice on the matter.

[6] Annexed to the founding affidavit are the letters of complaint with annexures, letters to the respondents depending on the nature of the complaint, follow up letters of correspondence from the applicant and in certain instances minutes of the Investigating and /or Disciplinary Committee meeting where applicable.

[7] Having considered the eleven complaints from individual clients and the Swart report,

the applicant found that there was no difference in dealing with the complaints individually as pertaining to the first or second respondents or cumulatively. The applicant contended that their conduct was such that they should not be allowed to continue to practice as legal practitioners. The report stated that there were possible trust shortages. This was established by taking into account a report from the Attorney's Annual Statement on Trust Accounts and an independent Registered Auditor's report on Attorney's Trust Accounts from the firm's auditors for the year 2017.

[8] The balances of the amount in the trust account were signed off by the respondents and their auditor. The monies available in the trust account for the years ending 28 February 2016 and 29 February 2017, were in the amount R3 723.80 and R 38 718.88 respectively. Regard was had to the complaints, in particular the one regarding the trust position of their client Ms Ndlovu. The RAF had in December 2015 made payment in the amount R 3 192 135.50. The trust shortage at 29 February 2016 was calculated to be in the amount of R 2 188 411.70 and as at 28 February 2017 an amount of R1 753 416. 62. It was opined by Mr Swart that the amount in shortages would increase depending on when the R 1 000 000.00 was invested and when the R400 000.00 was paid to Ms Ndlovu.

[9] The first and second respondents were found to have contravened the following:

Code of Conduct:

Clause 16.1 – failure to reply to all communication which required an answer within a reasonable time unless good cause for refusing to answer existed;

Clause 16.2 – failure to respond timeously to requests for information and/or documentation which they were able to provide;

Clause 16.3 – failure to comply timeously with directives from the applicant;

Clause 18.14 - failure to perform professional work with a degree of skill, care or attention and of such quality or standard as may be expected;

Rules of the LPC

Rule 54.12 – failure within a reasonable time, after the performance or earlier

termination of the mandate received from the complainant to furnish the complainant with a written statement of account setting out with reasonable clarity:

- Details of all amounts received by the firm in connection with the matter, appropriately explained;
- Particulars of all disbursements and other payments made by the firm in connection with the matter;
- Fees and other charges, charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed and the amount so agreed;
- The amount due to owed by the client;

Rule 54.13 – failed to pay the amount due to the complainant within a reasonable time.

Legal Practice Act

Section 37 (2) (a) and (b) read with Section 87 (2) (a) – the respondents did not produce any book, documents or record in their possession, custody or control for inspection to a person nominated by the applicant's council, and

Section 86(2) and (4) read together with Rule 54, 14,8 of the Rules in that the respondents did not ensure that the total amount of money in the firm's Trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of credit balances of the trust creditors shown in its accounting records.

[10] Both respondents dispute that the complaints alleged are deserving of the ultimate sanction, being that of their removal. Further they dispute the allegations of deficiencies in the trust account without a proper audit. They are willing to cooperate and to grant full access to the applicant's auditors to investigate their books. A request in this regard was made to the applicant but declined. The respondents lamented the attempt by Swart to

launch an investigation without a resolution in terms of section 37 of the LPA.

[11] According to the first respondent, personal circumstances he suffered were the reason for his neglect in fulfilling his oversight role when payments were made. He admitted his failure of not fulfilling his responsibilities as a legal practitioner and he relied mostly on the second respondent to do his work during his absence. His wife was diagnosed with an aggressive cancer during 2012 which required him to take care of her while receiving treatment. During 2015 she suffered a stroke and was bedridden, and this added to his responsibilities of taking charge of the home and up bringing of his two minor children ages thirteen and seven. He eventually had to take leave of absence from the practice. His wife passed away during 2015 and thereafter he suffered depression and had to undergo treatment. He recovered fully during 2018.

[12] The second respondent apologised and took full responsibility for his wrong doing.

[13] The eleven complaints from clients and responses from the respondents are summarised below:

13.1 Mr Tumelo Machabe Mohlala: The first respondent failed to execute with the skill, care or attention in the execution of his duties towards the complainant, who had instructed the first respondent to institute a claim against the RAF on behalf of the his mentally ill son. After the complainant had been advised that the offer made by the RAF in the amount of R25 000.00 was too little and that the RAF would be approached to increase the amount. The first respondent thereafter ignored the complainant's request for a feedback.

In answer the first respondent referred the enquiry to the second respondent who admitted the inordinate delay of four years, he stated that this was attributed to the fact that he could not trace the complainant,

13.2 Ms Anna Yende: The second respondent was instructed to institute a loss of earnings claim against the RAF. During April 2018 the RAF settled and paid to

the respondents an amount of R2 000 000.00. The complainant was only paid an amount of R500 000.00 during December 2018. Payment was delayed and the respondents failed to account for the outstanding amount of R1500 000.00.

The first respondent denied handling the matter or of knowing how it was finalized and he referred the enquiry to the second respondent. The latter admitted the amount paid in by the RAF. He denied that he deliberately ignored the complaint. According to him it was the complainant who requested that a sum of R500 000.00 be paid into her account and, she had wanted the rest of the monies paid into her account at Standard Bank despite being explained to that the monies had to be deposited into a trust. He did not deliberately withhold payment. The matter had been partly settled and general damages were settled at a later date. His bill of costs took long to be taxed and he still had to draw up a statement for his fees and disbursements

- 13.3 Ms Nomvula Sibeko: The first respondent was instructed to institute a claim against the RAF on behalf of a minor child. The minor child was referred to a Doctor for medical examination. The respondent failed to give the complainant a report on progress in the prosecution of the claim.

The first respondent denied knowledge of the matter which was being dealt with by the second respondent, He stated that he questioned the second respondent who informed him that the complainant failed to give proper instructions to the respondents.

- 13.4 Ms Anna Yende: The complainant was assisted by the second respondent. The RAF settled the claim and paid out a sum R2 000 000.00 for the loss of earnings during April 2018. An amount of R500 000.00 was paid to the complainant. An amount of R1 500 000.00 remains outstanding and, that the first and second respondent have not accounted fully to the complainant and or neglected to respond to correspondence addressed to them by the applicant.

The first respondent stated that he did not deal with the matter, he called for the file to peruse on progress and, he enquired from the second respondent who reported that proper instructions were not given and, the complainant had refused to avail the minor child for further medical examination. The second respondent confirmed what was reported by the first respondent. The complainant refused to travel with the child from Natal to Gauteng for medical examinations. The respondents contend that in this instance they responded timeously to the queries from the applicant. After the complaint was lodged it was difficult to communicate with the complainant.

- 13.5 Roel Nel Incorporated Attorneys: Independent Actuaries and Consultants instructed the attorneys to collect from the respondents an amount of R78 271.69 in respect of fees for services rendered, in the form of actuarial reports used by the respondents in their prosecution of RAF matters on behalf of their clients. Notwithstanding demand the fees remained outstanding.

The second respondent contended that the complaint had been dealt with timeously. The problem was that the statements sent to the respondents did not reflect some of the deposits the respondents made and the agreement was that the actuaries would be made when the work was done. The respondent had made payment in the amount of R40 000.00.

- 13.6 Thorrrington -Smith & Silver Attorneys obo Mr QPS Zungu: The respondents were instructed to institute action against the RAF obo complaints younger brother Mr Z Zungu who was a psychiatric patient. Summons had been issued in 2008. At the time his younger brother was assisted his father who had since died. In a follow up on progress in the matter during 2017 he was informed by the RAF that indeed summons had been issued and he was belatedly advised by the first respondent that the file could not be located

The first respondent stated that he was not aware of the complaint, however, on shown some correspondence by Ms Van Zyl of the applicant he came

across a letter dated 28 July 2004 directed to the client by an attorney in his office at the time, the postal and email address on the letter were no longer in use by his office. The second respondent denied any knowledge of the matter.

- 13.7 Ms M M Tshabalala: The first respondent was given instructions to institute action against the RAF. The first respondent failed to give feed back to the complainant. She was later informed by the RAF that the claim had been settled and that payment in the amount of R597 751.00 had been paid into the respondents' trust account. It was only after repeated requests for payment that she was paid an amount of R280 000.00.

The first respondent referred the complaint to the second respondent. The latter admitted to receiving payment but he contended but it took long to prepare a statement for the complainant. He stated that the communication from the applicant did not reach him. He had accounted to the complainant and documentation was available for inspection by the applicant.

- 13.8 Ms N J Nyawo: The claim against the RAF on behalf of the complainant's minor son was settled in the amount of R3 810 517.50. The second respondent took a fee of 25% paid the client R600 000.00 and invested an amount of R2 000 000.00 with Wealth Property Trust during 2014 and the said Trust was liquidated the following year. At the second respondent's office she was introduced to a certain Mr Moloi and she was advised that the first respondent had appointed him. The complainant stated that she refused to sign an already completed document, but that she was forced to because the second respondent advised that the court order made provision for the establishment of a Trust and for the appointment of a curator bonis. The second respondent has failed to give the applicant a comprehensive report on the matter.

Again, the first respondent referred this complaint to the second respondent.

The second respondent stated that he had not deliberately refused to attend to correspondence with the applicant. He had fully accounted to the complainant. She was referred to Wealth Property Trust not by him but by someone in his office. He denied the participation of a Mr Moloi Further, that the complainant was not forced to invest in that Trust, that the consultation with her was in the presence of her brother and sister-in-law. He stated that he had communicated with the complainant's attorney and had reported the Wealth Property Trust to the Fidelity Trust

- 13.9 Ms S Radebe: The first respondent was instructed to institute action against the RAF on behalf of the claimant. The respondent failed to inform the claimant timeously that the matter had been finalized, she heard from the receptionist when she went to make enquiries. The first respondent has failed to pay the complainant timeously and to properly account to the complainant, and had also failed to provide proof to the applicant that he had accounted and made payment.

The first respondent explained that the matter was attended by a Ms Mvundla who settled the claim at R10 000.00 for general damages. There was a contribution towards costs in the amount of R2 500.00. The client was untraceable hence the delay. The complainant received R9000.00 and she was satisfied with the outcome. The first respondent and Ms Mvundla appeared before the applicant and proof of documents were handed over to the applicant.

- 13.10 Ms R Ndlovu: The complainant had given instructions to institute action against the RAF on behalf of her minor child. It was only when she went to make enquiries when she was informed that an amount of R450 000.00 had been paid into her account, that a R1 000 000.00 would be invested for the minor child till she reached 18 years and, further that a R1 000 000.00 was available to her for the purchase of immovable property. The second respondent avoided her when she wanted to purchase the property. On her enquiries with the RAF she was informed that the claim had been settled in

the amount of R 3 192 135.50 during December 2015. The second respondent failed to timeously respond to the applicant and had instead communicated with the complainant. The complainant was instructed to open a trust account into which an amount of R 1 000 000.00 was deposited and a further amount of R400 000.00 on 19 May 2016. On 15 August 2016 second respondent requested a further meeting with the complainant where he informed her that more funds would be deposited in her bank account the following week. On 22 August 2016 the complainant filed an affidavit explaining that there had been a misunderstanding, that she was satisfied with the second respondent's explanation. The second respondent was called before the disciplinary committee of the Applicant's Monitoring unit was ordered to conduct an investigation.

The second respondent stated that the complaint was attended to timeously. He attended a disciplinary enquiry and the applicant was given all the documents relating to the matter. The delay was occasioned by him having to finalize the party and party costs. Further, the complainant was arrogant and they tried to protect the interests of the minor child under extreme difficulty. The complainant did not wish the money to be put in trust for the minor child. He believed that she was being influenced against him.

- 13.11 Ms P Rasunyane: The first respondent was given instructions to institute action against the RAF and the first respondent failed to give reports on the progress in the matter and he could not be reached. In response to a complaint by the applicant he advised that his office did not have record of the matter, this was despite confirmation by the RAF on 26 September 2016 that the firm had lodged a claim. The first respondent subsequently advised that his mandate had been terminated on 12 December 2015 and that his office was still searching for the file.

The first respondent denies having consulted with the complainant. He searched for her file and could not find it. The RAF refused to give him

information regarding the claim as his mandate had been terminated and he reported such fact to the applicant. He appeared before the disciplinary enquiry of the applicant and the complainant declined the invite to attend.

- 13.12 Ms F M Mahlangu: The first respondent was given instructions to institute action against the RAF following the demise of one Ms Matlala and on behalf of the complainant. The complainant was informed after a lengthy period that her claim had 'expired'. The first respondent neglected to respond to the complaint. The complainant denied that instructions were given only for funeral expenses. The first respondent pleaded not guilty at the disciplinary hearing and informed the applicant that it was a certain Mr Mduba and attorney was handling the matter and the latter pointed a finger at a certain Mr Mahlasela of the Germiston branch.

The first respondent denied knowledge of the matter and at the disciplinary hearing the complainant stated that she did not know him and the matter was postponed *sine die*. The second respondent also denied knowledge of the matter.

APPOINTMENT OF A CURATOR BONIS AND AUDITOR

[14] In the event that the court is satisfied that the applicant has made out a case for the removal, alternatively the suspension of the respondents, a curator *bonis* has to be appointed in terms of section 89 of the LPA, with powers as contemplated in the notice of motion, to take charge of the books in particular the trust account and operations of the respondents and the administration of the third respondent. In terms of section 87 (2) of the LPA the applicant is also entitled to instruct an auditor to write up and audit the books of the respondent and to certify compliance with sections 86 and 87(1) of the LPA.

ANALYSIS AND APPLICATION OF THE LAW

[15] This being a *sui generis* disciplinary process, the applicant brings forth such facts

from which it is objectively determined, whether the respondents were fit and proper persons to be allowed to remain in the legal profession and to practice law. In a long line of cases it has been established that the courts engage a three -stage enquiry, (i) that the offending conduct be established on a preponderance of probabilities; (ii) making a value judgment from the facts whether the legal practitioner is a fit and proper person to continue to practice (iii) having regard to all the circumstances and in exercising its discretion whether it is proper to strike a legal practitioner from the roll or to suspend him or her from practice; *Jasat v Natal Law Society* 2000(3) SA 44 (SCA); *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 at para [9].

[16] It is contended for the applicant that the respondents' responses were replete with defiance and disdain for the functionaries and the oversight responsibilities of the applicant. This was evident that despite the complaints, they insisted that an audit of the books of the practice be conducted. It was contended for the first respondent that the merits were not challenged and that it was conceded that serious transgressions had occurred. Further, it was contended that remorse was shown and, that a suspension rather than a removal be ordered. For the second respondent it was conceded that a trust shortfall did occur but not to the extent alleged by the applicant and that same had been caused the delay in payment by the RAF. He contended that the shortfall may now be decreased. The second respondent denied that he had refused or had not consulted with his clients

[17] The value judgment is made by having regard to the conduct complained about against that which is expected of the legal practitioner as determined by the LPA, the Code of Conduct and the LPC rules. This expectation is aptly stated by Eksteen JA in *Vassen v Law Society of the Cape of Good Hope* 1998 (4) 532 (SCA) at [14 and [15]:

“ it must be borne in mind that the profession of an attorney, as of any other officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members; and it is the duty of the respondent Society to ensure as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that the attorney is an honourable man who can be trusted to manage

his affairs meticulously and honestly.”

“When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any purpose than that for which it is being held, and that it will be available to be paid to the persons on whose behalf it is held whenever it is required.”

[18] In *Hepple v Law Society of the Northern Provinces* (507/2013) [2014] ZASCA 75 (29 May 2014) Mthiyane DP stated at [3]:

“.....The proceedings in applications to strike the name of attorneys from the roll are not ordinary civil proceedings. They are proceedings of a disciplinary nature and are *sui generis*. [4] It follows therefore that where allegations and evidence are presented against an attorney they cannot be met with mere denials by the attorney concerned. If allegations are made by the Law Society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside, the attorneys are expected to respond meaningfully to them and to furnish a proper explanation of the financial discrepancies as their failure to do so may count against them. In this regard the remarks of Harms ADO in *Malan v The Law Society of the Northern Provinces* [5] are apposite:

“If one turns to the bookkeeping charges, the position is simply that there is no allegation of the seriousness of the offences. They are brushed off on the basis *that the society failed to prove a trust shortage* that the bookkeeper had erred, that they did not know the rules, that the auditors had erred, or simply by not dealing with the pertinent allegations, the appellants’ approach on the paper was obstructionist. These factors are...”aggravating” and not extenuating because they manifest character defects, a lack of judgement and a lack of insight.”

Section 37 (2) (a) read with section 87 (2)(a) and section 86 of the LPA

[19] Practitioners (attorneys) must operate a separate trust account as provided for in section 86 of the LPA and they have a responsibility to account to their clients and to the applicant. Rule 54.6 of the LPC Rules requires the keeping of books of account which record both trust account and business account transactions which shall enable the respondents to comply with its obligations under the LPA. The purpose of the LPA is to give assurance to the general public that through its powers conferred by the Act it shall ensure that its members are fit and proper persons to conduct the affairs of clients in the legal profession. Practitioners therefore have a duty to cooperate with the applicant whenever an investigation is called for. The applicant is entitled in terms the sections 37 (2) (a) read with section 87 (2) (a), to establish an investigation into alleged financial irregularities against its members at the premises from which the trust account is operated. The investigative committee or individual so appointed by the applicant may demand that the practitioner produce for inspection any book/s or document/s relating to the trust account and the legal practitioner may not refuse to allow such inspection.

[20] Of vital importance is the nature of the improper conduct alleged and displayed by the respondents when, the applicant after several complaints made its first attempt to gain access for the purpose of examining their books. There was no explanation as to what the stolen accounting records consisted of, whether the records were kept in hardcopy form or whether they used a legal accounting software which would have meant that computers were stolen. The applicant contended that it was improbable that robbers would seek to steal only the respondents' books of account. The respondents' undertaking to approach their auditors to see what could be retrieved was not carried out and when this was followed upon, demand was made for a resolution that Mr Swart was appointed by the applicant to carry out such investigation. The first respondent informed Mr Swart of an intention to challenge applicant's authority to initiate such investigation.

[21] The balance on the annual statement in the trust accounts for the years 2016 and 2017 which were certified by the respondents' auditors and, the complaint by Mrs Ndlovu, raised a possibility of a trust shortage as at financial year ending 29 February 2016 and 28 February 2017 which had to be investigated. While the respondent conceded that there might be a trust deficit, they do not agree on the amounts projected by Mr Swart. This was

also the submission in the heads of argument by counsel for the second respondent. In my view, even though the respondents may have been entitled to demand to see a resolution, or an authority to Mr Swart to inspect their books, as stated in Hepple *supra* and Malan *supra*, their conduct of refusing to cooperate at that early stage and a failure to enlist the assistance of their own auditors can be described as being obstructionist at that time. A failure to properly account to a client “poses a very serious threat to public interest” and a failure to keep proper books of account is serious and exposes the practitioner to a suspension or removal from the roll; *The Law Society of the Free State v M G Molapo* (1030/2013) ZAFSHC 99 (27 June 2013) and *Chetty v The Law Society, Transvaal* 1985 (2)768 AD at 768 E-H.

[22] Subsequently there was a concession that there is a trust deficit caused by the RAF's failure to pay settlements on time. The second respondent suggests that the trust account may be reimbursed with fees earned in future matters from the RAF. While the first respondent takes full responsibility and pleads that his name not be removed from the roll, the second respondent suggests that such concession is made only to mitigate sentence, in other words, for his name not to be removed from the roll. In my view, the second respondent by even suggesting such solution loses sight of the fact that there was misappropriation from one client to reimburse another or, a misappropriation by the respondents for themselves with monies belonging to their clients and which they have not rightfully earned. This points to an abuse of the position of trust and fiduciary relationship the respondents had with their respective clients. Further, it also points to a disregard of the strain such conduct puts on the Legal Practitioners' Fidelity Fund to reimbursing clients who suffered pecuniary loss as a result of the improper conduct, and is a weakness in character establishing that they are not fit and proper persons to continue practicing as attorneys.

Complaints by clients: Clauses 16.1; 16.2; 16.3; 18.14 and Rule 54.13

[23] The above -mentioned clauses in the Code of Conduct and LPC Rules have been summarised and these pertain to the process engaged by the applicant, which was a precursor to ordering an investigation into the books of account of the practice by Mr Swart.

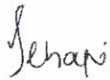
There was a complete refusal by the respondent to avail any information. The applicant has no idea of the extent of the financial irregularities that have been complained about or that may be revealed by further investigation. When considering the responses to the various complaints in the answering affidavits, there seems to be a pointing of fingers, a shifting of the blame among them, disregarding that in the process their reluctance to give full cooperation to enquiries into complaints of their clients, amounted to unprofessional conduct. While it is understandable that the first respondent had personal problems to deal with during the ill health of his spouse, as a partner in the firm he still had a responsibility to ensure that its affairs were smoothly run, first for the benefit of his clients and also where he stood to be remunerated by the practice. He was complicit in the refusal to avail the books of account for inspection by Mr Swart.

Decision of the applicant to seek removal or suspension

[24] I am satisfied that there was good cause to subject the respondents to this disciplinary process, however, I am not satisfied that the applicant or this court has been placed in a position where it has been fully apprised of the extent of the respondent's misconduct, especially with relation to the state of affairs regarding the status of the trust account of the firm. A full -scale investigation is required especially given the duration of the misconduct alleged. It is my view that in the circumstance it is proper to grant an interim suspension from practice of both respondents, it being relief in the alternative pending a final decision whether or not to strike the respondents from the roll. In the event that a striking from the roll is recommended after the full-scale investigation, "The full breadth of a practitioner's prior conduct should be before a court considering an application for re-admission", *The Law Society of the Northern Provinces v P A Morobadi* (1151/2017) [2018] CASCA 185 (11 December 2018).

[25] In the result the following order is granted:

- (a) The respondents are as an interim measure suspended from practicing as attorneys pending the finalization of an investigation into the trust account; to be followed by a disciplinary enquiry into the professional conduct of the respondents;
- (b) The investigation into the trust account referred to in (a) must be instituted within 6 (six) months of the date of this judgement and a disciplinary enquiry concerning the respondent professional conduct be instituted within 2 (two) months of the finalization of the report on the respondents' trust account;
- (c) The prayers granted in the relief sought in the notice of motion prayers are: 1.2 the alternative thereto and pending the finalization of the investigation and disciplinary enquiry in (a) and (b); 1.5 and 1.6 onwards where applicable for purposes of (a) and (b); 1.7; 1.8; 1.9 1.9.1; 1.9.3 are incorporated herein;
- (d) The application for the removal of the respondents' names from the roll of attorneys pending the enquiry referred to in are (a) (b) and the remainder of the prayers not incorporated herein is postponed;
- (e) The parties may supplement their papers on matters arising from the enquiry,
- (f) Costs are reserved;



TLHAPI V V

(JUDGE OF THE HIGH COURT)

I, agree



MNYOVU B F

(ACTING JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	09 FEBRUARY 2021
JUDGMENT RESERVED ON	:	09 FEBRUARY 2021
ATTORNEYS FOR THE APPLICANTS:		DAMONS MAGARDIE RICHARDSON ATTORNEYS
ATTORNEYS FOR THE RESPONDENTS:		PAUL MASHA INC.