

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 7772/2017

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE: <u>12/09/18</u> SIGNATURE: <u>[Signature]</u>	

In the matter between:

THE LAW SOCIETY OF THE NORTHERN

PROVINCES

APPLICANT

And

MODITI LUCAS MANKOE

1ST RESPONDENT

MANKOE INCORPORATED

2ND RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The first respondent Moditi Lucas Mankoe was admitted as an attorney on 29th August 1995 and initially practised as a partner at Mankoe and Magabane Attorneys. During 2002 he left the aforesaid firm and commenced practising for his own account under the name and style Mankoe Incorporated, the second respondent.
- [2] The applicant received complaints from Johanna Mmaleho Molepo, Mbulaheni Julia Malungudzi, Tshililo Emily Muthali, Florah Makoma Buthelezi, Mokgadi Linah Nongovela and Mulidzi Makhado. The complaints were to the effect that the first respondent has failed to account to complainants in respect of his trust account. This prompted the applicant to conduct an inspection of the respondents' records and practice. The inspection was conducted by Ms Phossina Kaserera (Kaserera) an auditor employed in the applicant's monitoring unit.
- [3] According to the applicant, Kaserera on her first visit to the respondents did not find the firms accounting records but was told that they were with firm's auditor. On her second visit the first respondent furnished her with limited accounting records

and undertook to furnish additional records, but has failed to do so.

- [4] The applicant alleges that Kaserera found that the first respondent was conducting separate trust and business banking accounts. The trust bank statement as at 29th February 2016 reflected a balance of R115-20. The first respondent informed Kaserera that there were no other banking accounts in operation.
- [5] The applicant further alleges that the first respondent failed to furnish Kaserera with the firm's cashbooks. On scrutinising the firm's trust bank statement, she found that money deposited into the firm's trust account was immediately transferred into the firm's business account. Kaserera also found that ledger accounts were written in such a way as to conceal the excessive transfers of trust accounts to business account. Excessive transfer from trust to business were recorded as fees due to the firm. On scrutinising the firm's fees journal and debit notes, she could not place any reliance on them.
- [6] According to the applicant, Kaserera was not furnished with a list of trust creditors. The list which was furnished to her

showed that the respondents did not have any trust creditors. Two complainants Ms Muthali and Ms Molepo were jointly owned R115 227-00 by the respondents as at 29th February 2016. The applicant therefore contends that as at 29th February 2016 the respondents had a trust shortage of R115 227-00. The respondents' audit report for the year ending 29th February 2016 was not qualified, and therefore no reliance could be placed on it.

- [7] With regard to the complaint of Ms Muthali the applicant alleges that Road Accident Fund (RAF) paid R19 278-30 into the respondents' trust on the 17th July 2015. On the 18th and 22nd July 2015 amounts of R18 000-00 and R1000-00 were respectively transferred to the firm's business account. In the ledger account the transfer has been recorded as fees due to the firm. The first respondent furnished Kaserera with proof of payment to the complainant by way of a bank guaranteed cheque. However, the origin of the funds paying the complainant could not be established and she was not paid out of the respondents' trust account.
- [8] Regarding the complaint of Ms Molepo, according to the applicant, the first respondent conceded delaying payment to the complainant as his party and party costs have not yet

been paid by RAF. RAF paid R128 060-00 into the respondents' trust account on the 16th November 2013. The respondents immediately debited their fees. The complainant was paid R96 000 on the 25th May 2016. However, as at 18th February 2015 the respondents' trust account had a balance of R95-43.

- [9] Turning to the complaint of Ms Malungudzi, according to the applicant, RAF paid the capital amount of R19 169-17 into the respondents' trust account on the 10th January 2008 together with an amount of R39 502-20 for taxed party and party costs. The complainant was paid during June 2014. According to the applicant, the first respondent's explanation was that he forgot to pay the complainant after receipt of payment of the party and party costs.
- [10] With regard to the complaint of Ms Makhado, according to the applicant, the first respondent has informed Ms Kaserera that the complainant was a client of Mankoe and Magabane Attorneys. The claim was settled during the year 2000, and when the partnership between him and Mr Magabane was dissolved, the complainant's file was transferred to Mr Magabane. The first respondent did not have any records

pertaining to that complaint, and Mr Magabane has since passed away.

[11] Regarding the complaint of Ms Buthelezi, the applicant received a complaint on the 4th August 2015. The complainant was alleging that she paid an amount of R112 000 into the respondents' trust account on the 2nd September 2014. The payment was for the purchase and transfer of immovable property belonging to a certain deceased estate. According to the applicant, the first respondent delayed in effecting transfer of the immovable property. As a result of that, the complainant cancelled the deal on the 15th July 2015. The respondents delayed in refunding the complainant, but only refunded her on the 15th September 2015, but failed to pay the interest accrued to the capital amount.

[12] Regarding the complaint of Ms Nengovela, the applicant alleges that it forwarded the complaint to the first respondent for his comment on the 3rd September 2014 and 7th November 2014. The first respondent replied on the 3rd December 2014 informing the applicant that the matter has been resolved and attaching an affidavit by the complainant withdrawing the complaint. The complaint was about a RAF

claim of which R49 042-00 was paid into the respondents' trust account on the 7th June 2007. The complainant was paid R36 781-50 on the 31st August 2016.

- [13] According to the applicant, the respondents have contravened the relevant provisions of the Attorneys Profession by failing to retain the firms' accounting records, and all files and documents relating to matters dealt with by the firm on behalf of its clients for at least five years from date of last entry; failed to update and balance its accounting records monthly; did not ensure that the accounting records of the firm fully explain the transactions and trust position of the firm; refused to comply with a directive to produce the firm's accounting record for inspection; failed to pay the amount due to clients within a reasonable time; failed to ensure that any withdrawal from the firm's trust account was made only in respect of a trust creditor and also in respect of money due to the firm; failed to ensure that under no circumstances shall trust money be deposited into the business bank account; failed to ensure that no account of any trust creditor is in debit; failed to ensure that the total amount of money in the trust account shall not be less than the total amount of credit balances of the firm's trust creditors;

first respondent failed to ensure that he performed professional work or work of a kind commonly performed by a practitioner with such a degree of skill, care or attention or of such quality or standard; and that the first respondent failed within a reasonable time after the performance or earlier termination of his mandate, account to his clients in writing.

[14] As a result of what I have stated above, the applicant resolved to approach the court for an order removing the first respondent's name from the roll of attorneys, alternatively that he be suspended from practice as an attorney, and also sought associated orders including the appointment of a curator.

[15] The first respondent has filed his answering affidavit. In his answering affidavit he is stating that the second respondent has been deregistered and he now practices as a sole proprietor under the name and style Mankoe Attorneys. He denies having contravened the provisions of the Attorneys Act and the Rules for the Attorneys Profession. However, his answering affidavit does not contain substantive answers to the allegations raised by the applicant. With the exception of the complaint of Ms Makhado, the first respondent contends

that he had resolved the complaints with the complainants as encouraged by the letters from the applicant. After settling the disputes with the complainants he submitted signed affidavits from complainants withdrawing their complaints in compliance with the directive from the applicant.

[16] Regarding the complaint of Ms Makhado, according to the first respondent the complainant and her minor child were involved in a motor vehicle accident. The claim of Ms Makhado was settled whilst the firm was still operating under the name Mankoe and Magabane Attorneys. In 2002 the late Magabane opened his own practice and took over the file of Ms Makhado as the claim of the minor child has not yet been finalised. The first respondent's contends he is not having details of that file.

[17] The first respondent is therefore of the view that his conduct does warrant the removal of his name from the roll of attorneys. He submits that such a decision should be taken as the last resort in the absence of any other appropriate sanctions.

[18] The matter was set down for hearing on the 3rd August 2018. On that date, counsel for the first respondent applied for

postponement of the matter, and his application was refused. After his application for postponement was refused, counsel for the first respondent informed the court that he did not have instructions to argue the matter on the merits. He remained in court when the applicant's counsel moved its application.

[19] Counsel for applicant submitted that the first respondent has contravened numerous provisions of Attorney's Act and the applicant's Rules. She submitted that these offences are serious as it is a fundamental duty of an attorney to ensure that trust money held on behalf of clients are kept safe. She further submitted that the conduct of the first respondent amounts to such a material deviation from the standards of professional conduct and therefore, he is not a fit and proper person to continue to practise as an attorney. In her view the first respondent's name should be removed from the roll of attorneys.

[20] It is trite that this court exercises its discretion when it determines whether an attorney is a fit and proper person to remain on the roll of attorneys. If it is established that indeed, the attorney is not a fit and proper person to practice as such, what this court must decide is whether the attorney be struck off the roll or suspended from practice. The applicant is a regulatory body of the

attorneys' profession and has a duty to protect the public and the integrity of the profession.

[21] Applications of this nature are regulated by section 22(1) (d) of Attorneys Act 53 of 1979 ("the Act") and it reads as follows:

"22(1) any person who has admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the Court with the jurisdiction of which he practices.

(d) If he in the discretion of the court, is not fit and proper to continue to practice as an attorney..."

[22] It settled law that the application in terms of s 22(1) involves a three stage enquiry. The first enquiry is aimed at determining whether the law society has established the offending conduct upon which it relies on a balance of probabilities. The second question is whether, in the light of the misconduct thus established, the attorney concerned is not a fit and proper person to continue to practice as an attorney, and this requires a value judgment. The third enquiry yet again requires the court to exercise a discretion, and determine whether the person who has been found not to be a fit and proper person to practice as an attorney

deserves the ultimate penalty of being struck from the roll or whether an order of suspension from practice will suffice. (See **Jasat v Natal Law Society 2000 (3) SA 44 (SCA)** in **para 10** and **Summerley v Law Society of Northern Provinces 2006 (5) 613 (SCA)** at **para 2**)

[23] The applicant on receipt of the complaints forwarded them to the first respondent for his comment. The applicant seems to be using a template when forwarding complaints to the first respondent for his comment. The covering letter attaching the complaints sent the first respondent reads as follows:

“A complaint has been made against at this office by the abovementioned complainant. A copy thereof is attached hereto, for your information.

Please: (1) acknowledge receipt of this letter and;

(2) Furnish us with your comments to the allegations against you on or before __

(3) Note further the provisions of rules 95.2 and 89.25 which state that:

‘Unprofessional or dishonourable or unworthy conduct on the part of a practitioner shall include:

95. 2 the failure to provide an answer in elucidation or explanation in the said matter;

89.25 the failure to comply with an order, requirements or request of the council or request of the secretary.'

You might be facing a charge against you for ignoring these rules. Please let us hear from you by return post on/before ___as time is of the essence in the investigation of complaints; and

(4) Note that you are free to resolve the matter with the complainant but this should not serve as an interruption of the date of the requested response; and

(5) In the event that the matter is resolved between yourself and the complainant we require the complainant to provide our offices with a written withdrawal of said complaint."

[24] The simple interpretation of the abovementioned letter is that it encouraged the first respondent to settle the complaints with the complainants. After settling complaints the

complainant was required to file a written withdrawal of the complaint with the applicant. However, the process of the first respondent negotiating with the complainant does not interrupt the date on which he had to furnish the applicant with his response, unless he had applied for an extension of time.

[25] The first respondent took advantage of clause 4 and 5 of the applicant's letter and was able to settle all complaints against him with the exception of that of Ms Makhado. He also provided the applicant with affidavits of the complainants withdrawing their complaints against him. Despite that the applicant still required the first respondent to furnish it with a proper response to the complaints. However, that was not a condition that was included in the covering letter attaching the complaints sent to the first respondent.

[26] Paragraph 5 of the applicant's covering letter attaching the complaint is clear. It requires the complainant to provide the applicant with a written withdrawal of the complaint, of which in my view once the withdrawal has been furnished, that is the end of the matter. If despite the withdrawal of the complaints, the applicant still needed the first respondent to furnish it with a proper response to the complaints that were

withdrawn, it should have specifically stated that on its letter.

In my view in relation to the five complaints, the first respondent had adequately dealt with the complaints as per the applicant's directive, and I don't find any reason why he should be penalised for what he was encouraged to do.

[27] With regard to the complaint of Ms Makhado, the first respondent has furnished the applicant with a reasonable explanation. The applicant seems to have accepted that explanation as the applicant in its replying affidavit on this issue has simply noted the first respondent's version.

[28] However, that is not the end of the matter. There is the report of Kaserera which is damning on the first respondent. The first respondent in his answering affidavit has not challenged the findings of Kaserera.

[29] In her report, she found that the firms accounting records were not regularly updated and also not properly updated to reflect the true trust position. That in my view is contravention of Rule 35.5 which obliges an attorney to keep complete and accurate accounting records in accordance with the generally accepted accounting practice.

- [30] Kaserera reported that the first respondent did not furnish her with all the accounting records and also did not co-operate with her. That is contravention of section 78(5) of the Act that empowers the applicant through its nominee to inspect the accounting records of any attorney in order to satisfy itself that the provisions of the Act relating to keeping of trust banking accounts and maintaining of proper accounting records relating to trust monies have been observed.
- [31] Of more serious, and not to say that the other transgressions were not serious, she found that as at 29th February 2016 there existed a trust shortage of at least R115 227-00. Even though the trust creditors who make up that shortage were later paid by the first respondent from other sources, it does not cure the trust shortage as at the 29th February 2016, but merely mitigate the risk against the Fidelity Fund. The trust creditors were supposed to have been paid from the trust account. What happened in this case is that the first respondent had borrowed himself trust money, which is nothing but theft of trust money.
- [32] Kaserera also found that the first respondent has delayed in paying the trust creditors and in some instances had taken years to pay them without any plausible explanation.

[33] With regard to the first requirement, I am satisfied that applicant has proved that the first respondent has delayed in paying trust creditors; a trust shortage existed as at 29th February 2016; the first respondent failed to furnish Kaserera with all the firm's accounting records when requested to do so, and has also not adhered to keeping the firms accounting records with the generally accepted accounting practice. Therefore, in my view, the applicant has satisfied the first requirement.

[34] With regard to second requirement, the applicant was admitted as an attorney on the 29th August 1995. As at the 29th February 2016 he had practised for about 21 years as an attorney. He had also practised as an attorney in partnership with the late Magabane. He therefore had vast experience in the attorney's profession. He had devised a sophisticated scheme of transferring trust money to his business account which made it difficult even for his auditors to pick it, as for the past years he was getting an unqualified audit certificate. In other words all his deeds were well planned. Despite not substantially disputing the serious allegations levelled against him, he does not concede to having made a mistake or error. In my view, his actions were deliberate and well

planned. His actions is not expected of an attorney of his years of experience. He is not alleging that he was inexperienced in handling the trust account or offer a plausible explanation for his actions. He simply does not have any explanation for his conduct. Therefore, in my view, the applicant has satisfied the second requirement. The court therefore find that in the light of the misconduct, he is not a fit and proper person to continue to practise as an attorney.

[35] I turn to the third enquiry, whether the first respondent should be struck from the roll or whether an order of suspension from practice will suffice. Striking him from the roll is a severe penalty. However, as I have already found that by borrowing himself trust money amounted to theft, it follows that his transgression has an element of dishonesty. It is trite that where dishonesty is involved, removal from the roll should follow, unless there are exceptional circumstances, which in the present case are non-existent. (See **Law Society of Northern Provinces v Sontag 2012 (1) SA 372 (SCA)**). The first respondent was involved in his scheme for over a period of several years without acknowledging his error. He paid the complainants only after they have lodged complaints with the applicant.

[36] Under the circumstances in my view, the only suitable sanction is the removal of the first respondent's name from the roll of attorneys. No exceptional circumstances have been shown to justify a lesser penalty.

[37] In the result the following order is made:

ORDER

37.1 That the name of the first respondent Moditi Lucas Mankoe is removed from the roll of attorneys.

37.2 That the first respondent immediately surrenders and deliver to the registrar of this Honourable Court his certificate of enrolment as an attorney of this Honourable Court.

37.3 That in the event of the first respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of his order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.

37.4 That the respondents be prohibited from handling or operating on the trust accounts as detailed in paragraph 37.5 hereof.

37.5 That Johan van Standen, the head: members affairs of applicant or any person nominated by him, be appointed as a *curator bonis* (curator) to administer and control the trust accounts of Respondents, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondents' practice as an attorney and including, also, the separate banking accounts opened and kept by respondents at a bank in the Republic of South Africa in terms of **section 78(1) of Act No.53 of 1979** and or any separate savings or interest-bearing accounts as contemplated by **section 78(2) and /or section 78(2A) of Act No. 53 of 1979**, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections 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:

37.5.1 immediately to take possession of respondents accounting record, records files and documents as referred to in

paragraph 37.6 and subject to the approval of the board of control of the Attorneys 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 Respondents was acting at the date of this order;

37.5.2 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 interests of person having lawful claims upon the trust account(s) and /or against the respondents in respect of monies held, received and /or invested by the respondents in terms of **section 78(1)** and /or **section 78(2)** and /or **section 78(2A) of Act No 53 of 1979**(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 Respondents 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);

37.5.3 to ascertain from the respondents' accounting records the names of all persons on whose account the respondents appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon the First Respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

37.5.4 to call upon such trust creditors to furnish such proof, information and /or affidavits as he may require to enable him, 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;

37.5.5 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 creditors or creditors' right of access to the civil courts;

37.5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of the fund.

37.5.7 in the event of there being any surplus in the trust account(s) of the 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 78(3) of Act 53 of 1979** in respect of any interest therein referred to and, secondly without prejudice to the rights of the creditors of the respondents, costs, fees and expenses referred to in paragraph 37.10 of this order, or such portion thereof as has not already been separately paid by the respondents to applicant, and if there is any balance left after payment in full of such claims, costs, fees and expenses, to pay such balance, subject to approval of the board of control of the fund, to the first respondent, if he is solvent, or, if the first respondent is insolvent, to the trustee(s) of the first respondent's insolvent estate;

37.5.8 in the event of being insufficient trust monies in the trust banking account(s) of the respondents, in accordance with the available documentation and information, to pay in full the claims of trust creditors who 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 Attorneys Fidelity Fund;

37.5.9 subject to approval of the chairman of the board of control of the fund, to appoint nominees or representative and /or consult with and /or engage the services of the attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

37.5.10 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 respondents has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

37.6 that the respondents immediately delivers the accounting records, records files and documents containing particulars and information relating to:

37.6.1 any monies received, held or paid by the respondents for or on account of any person while practising as an attorney;

37.6.2 any monies invested by the respondents in terms of **section 78(2)** and /or **section 78(2A) of Act No 53 of 1979;**

37.6.3 any interest on monies so invested which was paid over or credited to the respondents;

37.6.4 any estate of a deceased person or an insolvent estate under curatorship administered by the respondents, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

37.6.5 any insolvent estate administered by the respondents as Trustee or on behalf of the trustee in terms of the **Insolvency Act, No 24 of 1936;**

37.6.6 any trust administered by the respondents as trustee or on behalf of the trustee in terms of the **Trust Properties Control Act, No 57 of 1988;**

37.6.7 any company liquidated in terms of the **Companies Act, 61 of 1973**, administered by the respondents as or on behalf of the liquidator;

37.6.8 any close corporation liquidated in terms of the **Close Corporations Act, 69 of 1984**, administered by the respondents as or on behalf of the liquidator and;

37.6.9 the first respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 37.5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the respondents shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

37.7 That should the respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the 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.

37.8 That the curator shall be entitled to:

37.8.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any

amount, either determined on taxation or by agreement, in respect of fees and disbursement due to the firm;

37.8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

37.8.4 wind-up of the respondent's practice.

37.9 That the first respondent be and is hereby removed from office as:

37.9.1 executor of any estate of which the first respondent has been appointed in terms of section **54(1)(a)(v)** and section **85** of the Administration of Estates **Act, No 66 of 1965** or the estate of any other person referred to in **section 72(1)**;

37.9.2 curator or guardian of any minor or other person's property in terms of section **72(1)** read with section **54(1)(a)(v)** and section **85** of the Administration of Estates **Act, No 66 of 1965**;

37.9.3 trustee of any insolvent estate in terms of section **379(2)** read with 379(e) of the Companies **Act, No 61 of 1973**;

37.9.4 liquidator of any company in terms of section **379(2)** read with **397(e)** of the Companies **Act, No 61 of 1973**;

37.9.5 trustee of any trust in terms of section **20(1)** of the Trust Property Control **Act, no 57 of 1988'**

37.9.6 liquidator of any close corporation appointed in terms of section **74** of the Close Corporation Act, **no 69 of 1984**; and

37.9.7 administrator appointed in terms of section **74** of the Magistrate Court Act, **No 32 of 1944**;

37.10 That the respondents be and is hereby directed:

37.10.1 to pay, in terms of section **78(5) of Act 53 of 1979**, the reasonable costs of the inspection of the accounting records of the respondents.

37.10.2 to pay the reasonable fees of the auditor engaged by applicant

37.10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

37.10.4 to pay the reasonable fees and expenses of any persons consulted and /or engaged by the curator as aforesaid;

37.10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

37.10.6 to pay the costs of this application on an attorney and client scale.

37.11 That if there are any trust funds available the respondents shall within six(6) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursement due to the first respondent in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditors(s) concerned for payment or recovery thereof;

37.12 That a certificate issued by a director of the Attorneys 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.

**MF. KGANYAGO J**

**JUDGE OF THE HIGH COURT LIMPOPO
DIVISION, POLOKWANE**

I agree

**GC MULLER**

**JUDGE OF THE HIGH COURT LIMPOPO
DIVISION, POLOKWANE**

APPEARANCE:

Counsel for the applicant : Magardie SL

Instructed by : Damons Magardie

Richardson Attorneys

Counsel for the respondents : in default

Instructed by

: in default

Date of hearing

: 3rd August 2018

Date of judgment

: 12th September 2018