

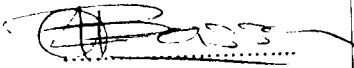
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

24/3/2017
CASE NO: 6838/2014

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
24/3/2017	
DATE	SIGNATURE

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

LLENGA PAULUS MONAMA

Respondent

JUDGMENT

BASSON, J

- [1] This is an application for the removal of the Respondent's name from the roll of attorneys following his suspension from practice as an attorney by order of this court dated 29 July 2014. The Respondent is still on the roll of attorneys of this Court.

Background

- [2] The application was served on the Respondent personally on 11 February 2014. He opposed the application on 18 February 2014. The Respondent, however, failed to file his answering affidavit and the matter was set down for hearing on 29 July 2014. At the hearing of the matter on 29 July 2014 the Respondent was suspended from practice as an attorney. The court ordered the Respondent to file his answering affidavit by 28 August 2014. The respondent later filed his answering affidavit.
- [3] Subsequent to the order of 29 July 2014, the Law Society received approximately 29 further complaints pertaining to the conduct of the Respondent. This necessitated the Applicant to file a supplementary affidavit. The Respondent has not filed an answering affidavit in respect of the new complaints lodged against him.
- [4] The notice of set down was served on the Respondent on 22 January 2016. At the hearing of the matter on 29 July 2016, the Respondent sought yet a further (third) postponement in order to file a supplementary answering affidavit in respect of the Law Society's supplementary affidavit. The matter was postponed *sine die* and the Respondent was ordered to file his supplementary answering affidavit by 22 August 2016.
- [5] Notwithstanding the court order of 29 July 2016, the Respondent has to date failed to file his supplementary answering affidavit. The notice of set down was served on the Respondent on 28 September 2016. No heads of argument was filed by or on behalf of the Respondent.

Application for postponement

- [6] At the commencement of the hearing the Respondent - appearing in person – from the bar brought an application for yet another postponement. In his address he tendered facts from the bar as to why he should be granted yet another opportunity to file a supplementary answering affidavit to the Law Society's supplementary affidavit. One of the reasons why a postponement was sought was because, according to the Respondent, he did not have all the files pertaining to the additional complaints referred to in the Law Society's supplementary affidavit. The Respondent, when questioned by this Court, could, however, not provide a satisfactory explanation as to why he did not comply with the Court order dated 29 July 2016 in which he was expressly ordered by the Court to file his supplementary answering affidavit on or before 22 August 2016. In her reply, Ms Margadie on behalf of the Law Society disputed the facts tendered from the bar by the Respondent and indicated to the Court that the Respondent is in fact in possession of the large majority of the files that he now says he does not have. She also pointed out to the Court that the Respondent did nothing to obtain the three files that are in fact in possession of the Law Society apart from one letter sent to the attorneys acting on behalf of the Law Society requesting some files. Despite the fact that the Law Society responded to the letter the attorneys acting on behalf of the Respondent did not even bother to reply to the letter.
- [7] The law regarding applications for postponement is settle and I can do no better to quote at length from a decision of the Supreme Court of Appeal setting out the legal principles relating to these applications: *Magistrate Pangarker v Botha and another*.¹

“Legal principles in respect of postponements

[23] Where a postponement is sought, it is determined at the court's discretion. A party seeking a postponement must demonstrate 'a full and satisfactory explanation of the circumstances grounding the indulgence'. A magistrate is empowered to grant a postponement *mero motu* where the —

'circumstances justify it and the further time required by the applicant is

¹ 2015 (1) SA 503 (SCA).

fully and adequately explained [and] refusal of the postponement should lead to an injustice being done to the party seeking it'...

[24] Van Zyl J in *Thirion* said

'Of course no court would feel the urge to come to the assistance of a litigant who has been the author of his own misfortune and has suffered injustice by his own conduct. Cognisance must, therefore, be taken of all the relevant facts and circumstances giving rise to such misfortune and injustice. If he has been careless, dilatory or in bad faith (*mala fide*), he cannot expect the courts to come to his assistance.'

[25] The legal principles governing the grant and refusal of postponements are well established. In *Carephone (Pty) Ltd v Marcus NO and Others* Froneman DJP held:

'In a court of law the granting of an application for postponement is not a matter of right. It is an indulgence granted by the court to a litigant in the exercise of a judicial discretion. What is normally required is a reasonable explanation for the need to postpone and the capability of an appropriate costs order to nullify the opposing party's prejudice or potential prejudice.'

[26] In *Take and Save Trading CC v Standard Bank of SA Ltd* Harms JA said:

'One of the oldest tricks in the book is the practice of some legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or of clients to terminate the mandate (more often than not at the suggestion of the practitioner), to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as of right.'

[27] The Constitutional Court held in *Lekolwane and Another v Minister of Justice and Constitutional Development*:

'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted unless this court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in

the discretion of the court. In exercising that discretion, this court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest.'

...
 [34] The right to legal representation is a corollary of the right of access to justice. The denial of this right has wide-ranging consequences for the nature and experience of justice. Nevertheless, a litigant may not benefit from his own misconduct or otherwise careless approach to legal proceedings. It is apparent from the record that AB had ample time to avail himself of a legal representative who was both well apprised of the dispute and available to attend the court proceedings. Despite this he failed to secure such. AB insisted that he would not have any legal representative other than Mr Derris. The high court took the view that he was entitled to an attorney of his own choice. This was an incorrect approach when regard is had to the history of the matter and the rights of the other party. The trial had been postponed three times at his instance. CB's rights were completely disregarded by the high court."

- [8] Various important principles emerge from this *dictum* that are pertinent to this matter: The granting of an application for postponement is not a matter of right: It is an indulgence sought from the Court. As such an applicant for a postponement should provide a proper explanation for the need to postpone to enable a Court to decide whether there is a need for a postponement. In the present matter no proper application served before the Court. In addition, the Respondent sought from the bar to justify why the matter should be postponed by referring to a host of facts which were disputed by Ms Magardie. What makes matters worse is the fact that the Respondent has been an attorney since 1999 and despite having practiced as an attorney for many years, displayed a total disregard for proper procedures in this Court by moving an application from the bar. This application should be viewed against the fact that this would have been the third postponement of a matter that has been dragging on since 2014. The Respondent has been suspended from practice as far back as 29 July 2014. On the two previous appearances, the

matter was postponed to allow the Respondent to file his opposing papers. On the first occasion the Respondent, although belatedly, did file his opposing papers. On the second occasion the Respondent was ordered in terms of a Court order to file his supplementary answering affidavit. Months went past and the Respondent simply disregarded this court's order and up until today has not made an effort to file his supplementary answering affidavit.

[9] The Court has considered the application and has dismissed the application and ordered that the matter proceed on the merits.

[10] The Respondent was granted an opportunity to respond to the submissions made on behalf of the Law Society but indicated that he could not address the Court because he was not prepared and did not have legal representation. In this regard I reiterate what the Supreme Court of Appeal in *Magistrate Pangarker*² held namely that although the right to legal representation is undoubtedly an important right, a litigant may not benefit from his own careless approach to legal proceedings. The Respondent had ample time to file his supplementary answering affidavit but instead displayed a disrespectful approach to a matter that has a history of postponements. The Court also takes into account that the Respondent in this matter has been suspended from practice for very serious transgressions. As will be pointed out herein below, the number of claims lodged with the Attorneys Fidelity Fund has substantially increased since the Law Society has filed its supplementary founding affidavit. It is thus of critical importance and in the public's interest that this Court proceed with the matter brought against the Respondent and finalise the matter. I will return to this latest attempt to prevent this Court to deal with very serious transgressions where I discuss the sanction that should be imposed on the Respondent.

Proceedings before the Court

[11] It is trite law that applications of this nature are *sui generis* and of a disciplinary nature. The Law Society as *custos morum* of the profession merely places

² *Ibid* at [34] and [35]

facts before the Court for consideration.³

- [12] In proceedings such as this the enquiry is threefold: The Court must first decide as a matter of fact whether the alleged offending conduct by the attorney has been established. Secondly, if the Court is satisfied that the offending conduct has been established, a valued judgment is required to decide whether the person concerned is a fit and proper person to practise as an attorney.⁴ Lastly, if the Court decides that the attorney concerned is not a fit and proper person to practise as an attorney, it must decide in the exercise of its discretion whether in all the circumstances of the case the attorney in question is to be removed from the roll or merely suspended from practice. Ultimately this is a question of degree.⁵ The Court's discretion must be based upon the facts before it. The facts in question must be proved on a balance of probabilities.⁶ The facts upon which the Court's discretion is based should be considered in their totality.
- [13] It is trite that an attorney must scrupulously comply with the provisions of the Attorneys Act and the Applicant's Rules promulgated thereunder especially in relation to the money of a client which is placed into his/her custody and control. Trust money does not form part of the assets of an attorney. 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 violates 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 an attorney on behalf of another person.
- [14] An attorney must further also 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. In this regard the law expects from an attorney

³ See: *Hassim vs Incorporated Law Society of Natal* 1977(2) SA 757(A) at 767C-G and *Law Society Transvaal vs Matthews* 1989(4) SA 389(T) at 393 E.

⁴ See: *Kaplan vs Incorporated Law Society, Transvaal*, 1981 (2) SA page 762 at page 782 A – C.

⁵ *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) at 51 B-I.

⁶ *Summerley vs Law Society Northern Provinces* 2006(5) SA 613(SCA) at 615 B-F.

uberrima fides - the highest possible degree of good faith - in his/her dealings with his/her client.

The Respondent's contraventions

- [15] The Law Society received approximately 45 complaints against the Respondent for conduct which relates to the Respondent's failure to answer to correspondence; his failure to give proper attention to the affairs of his client and without lawful cause or excuse, failed to perform work with such a degree of skill, care or attention, as in the opinion of the council may reasonably be expected; the Respondent failed to pay over funds to clients and failed to account to clients and delayed payment of trust money to clients; the Respondent failed to pay the fine imposed by the Applicant's Disciplinary Committee; and misrepresented to clients that he is a conveyancer.
- [16] In amplification of these complaints, the Law Society sets out in fair detail the nature of the complaints received against the Respondent. I do not deem it necessary to refer to all of these complaints and will suffice with a reference to some of the complaints.
- [17] Mr S Manana paid the Respondent an amount of R10 000.00 and instructed him to act on his behalf against Nedbank Ltd following the repossession of his trucks. The Respondent failed to execute the mandate given to him by the complainant. The Respondent also failed to answer to this complaint when the Law Society requested him to do so. In his answering affidavit the Respondent does not attach any proof that he had executed his mandate.
- [18] Ms Lebakeng purchased an immovable property from Mr and Mrs Zulu and instructed the Respondent to attend to the transfer of the property into her name. The complainant paid the Respondent a total amount of R25 326.00. The Respondent has failed to effect transfer of the property and has also failed to report to the complainant regarding the progress of the matter. He also failed to answer to this complaint. Of particular concern is the fact that the Respondent fraudulently created the impression to members of the public that he is a

conveyancer when such is not the case.

- [19] In regard to the Respondent's misrepresenting to the public that he is a conveyancer, the Court was referred to a number of sale agreements where it is expressly recorded that the transfer of the property would be effected by LP Monama Attorneys. In a letter to the Respondent, De Wet, Lyell, Nel and Maeyane Inc specifically records that they have been informed that the Respondent had been instructed to effect the transfer of the property referred to in the letter. Furthermore, in a letter on his own letterhead to the Law Society, the Respondent expressly admitted that his firm was attending to the transfer of this particular property.
- [20] Mr J H Leoka likewise purchased a property and the Respondent was instructed to assist him in obtaining the title deed of the immovable property. He paid the Respondent an amount of R9 650.00. The Respondent failed to execute the mandate given to him and attempts to contact him proved fruitless. The Respondent also failed to answer to this complaint. Again the Respondent fraudulently created the impression to members of the public that he is a conveyancer when such is not the case.
- [21] Ms E Mpinda instructed the Respondent during 2009 to institute a claim on behalf of her children against the estate of her late husband. The Respondent failed to execute the mandate given to him and attempts to contact him proved fruitless. The Respondent also failed and/or neglected to answer to this complaint.
- [22] Mr B S Kgomongwe instructed the Respondent and an estate agent to attend to the sale of his immovable property for an amount of R110 000.00. According to him the Respondent has failed to effect payment of the proceeds of the sale in his favour and has failed and/or neglected to answer to this complaint. The Respondent also failed to attend a disciplinary hearing in respect of this complaint.

- [23] Norman Berger & Partners Incorporated on behalf of Rodel Financial Services (Pty) Ltd lodged a complaint with the Law Society. According to the firm, the complainant bridged finance for payment of rates and levies during November 2012 which funds were paid into the bank account of the Respondent. The Respondent failed to furnish the complainant with progress reports and attempts to get hold of the Respondent proved fruitless. The Respondent also failed and/or neglected to answer to this complaint.
- [24] The Respondent failed to effect payment of a fine that was imposed on him following a disciplinary hearing which was held on 22 June 2011.
- [25] Ms Maphumo conducted an investigation into the affairs of the Respondent's firm. She visited the firm on 23 February 2012, 29 March 2012, 03 May 2012 and 21 August 2012. On 21 August 2012 the Respondent advised Mapfumo that he was still in the process of updating the firm's 2009 accounting records. During this visit the firm's current accounting records were also still with the firm's bookkeeper. The Respondent only furnished Mapfumo with bank statements for the period 28 February 2009 until 28 February 2010. She confirmed that separate trust and business banking accounts were conducted at Standard Bank, Vereenging Branch. A bank statement of the firm's trust account dated 27 February 2010 reflected a balance of R567 495.34. No further practice bank accounts were in operation. Mapfumo could not determine the trust position of the firm as no accounting records and lists of trust creditors were made available for her inspection.
- [26] An attorneys firm - Grimbeek Van Rooyen & Partners – acting on behalf of Ms Phalatsi lodged a complaint with the Law Society. It appears that during March 2009 the Respondent represented the complainant in her divorce matter which matter later became settled. An amount of R 94 000.00 was paid out in the trust account of the Respondent's firm in respect of settlement. According to Grimbeek Van Rooyen & Partners Mrs Phalatsi only received an amount of R 17 000.00 and proceeded to demand that the Respondent pay over the outstanding amount of R 77 000.00 into their trust account for the benefit of Mrs Phalatsi. Various letters were sent to the Respondent but no response was

forthcoming. The Respondent then claimed that he did pay more amounts over to Mrs Phalatsi *inter alia* an amount of R 7 000.00 which he paid to her in cash at a Sasol Filling station. Finally in October 2011 the Respondent sent a Bill of Costs to Mrs Phalatsi stating that she owed him fees in the amount of R 52 052.64. In the Bill of Costs it is indicated that she owed him R 39 241.67 for the High Court divorce matter. Mrs Phalatsi disputed the bill of costs stating that the Respondent had informed her that the total legal fees until finalisation of her divorce matter would not exceed R 15 000.00.

- [27] Mapfumo further found that that if she had regard to Mrs Phalatsi's ledger account against the bank statements, it showed that that at times the firm did not keep the money in the trust banking account and that it was apparent to her that the firm was rolling funds creating a risk to the Attorneys Fidelity Fund.
- [28] In her report dated 5 September 2012, Mapfumo concluded that the Respondent has contravened the following provisions of the Attorneys Act and the Rules: Rule 68.4.2 in that the firm did not ensure that the accounting records are kept at no other place than its main office; Rule 69.7.1 in that the firm did not, at intervals of not more than three months, extract a list of trust creditors and compared the total of the list with its trust bank balance; and Section 78(1) of the Act read with Rule 69.3.1 in that the Respondent has failed to keep sufficient funds in the trust banking account to meet his obligations to trust creditors.
- [29] Mapfumo conducted a further visit to the Respondent's firm on 30 July 2013 following various complaints the Applicant received against the Respondent. She experienced difficulty in meeting with the Respondent. During her visit to the Respondent again advised that the firm's accounting records were not at the firm but with the firm's bookkeeper. The Respondent undertook to deliver the accounting records at the Law Society's offices but he failed to do so.
- [30] In a further report dated 14 October 2013, Mapfumo expressed the view that the Respondent has contravened the following provisions of the Attorneys Act

and the Rules: Rule 68.4.2 in that the firm did not ensure that the accounting records are kept at no other place than its main office; Rule 69.7.1 in that the firm did not, at intervals of not more than three months, extract a list of trust creditors and compared the total of the list with its trust bank balance; Section 78(1) of the Act read with Rule 69.3.1 in that he has failed to keep sufficient funds in the trust banking account to meet his obligations to trust creditors; and Rule 70.3 in that the firm did not ensure that the accountant's report to be furnished by an accountant in terms of Rule 70.4 is so furnished within or at the required time.

- [31] The Respondent, although belatedly, answered to these allegations. The Respondent admitted some of the allegations but denied others. In respect of some of the complaints the Respondent merely noted the allegations without tendering an explanation.

Further complaints

- [32] I have already referred to the fact that since the answering had been filed, a further 18 complaints against the Respondent came to light. Despite having been afforded an opportunity to answer to these complaints, the Respondent has elected not to do so.
- [33] From these further complaints lodged against the Respondent, it appears that the Respondent continued to masquerade as a conveyancer to various clients.
- [34] The Respondent also persisted in failing to execute mandates given to him by numerous clients. In the case of Mr George Malefetsane Mareo the Respondent was instructed on 30 April 2014 to assist him with his divorce matter. An amount of R9 500.00 was paid to the Respondent. The Respondent failed to attend at court and therefore failed to attend to the matter.
- [35] Ms M J Chapatso instructed the Respondent to assist her in retrieving her motor vehicle from her brother. The vehicle was registered in the name of the complainant. The complainant paid the Respondent an amount of R3 800.00

but the Respondent failed to attend to the matter. The Respondent also failed to report to the complainant regarding the progress of the matter and attempts to get hold of him proved fruitless.

- [36] In 2005 Mr Patrick Mofokeng instructed the Respondent to assist him in the administration of the estate of his late father and to attend to the transfer of immovable property into the name of the complainant and his siblings. The Respondent failed to execute the mandate given to him. The complainant has since lodged a claim with the Attorneys Fidelity Fund.
- [37] In addition to this claim with the Attorneys Fidelity Fund, the Law Society has received a further 12 from the Respondent's clients. These claims were submitted to the Attorneys Fidelity Fund in terms of the provisions of section 26 of the Attorneys Act and pertain to the misappropriations of trust funds on the part of the Respondent.
- [38] During the hearing, Ms Magardi informed the Court that since the supplementary founding affidavit had been filed, the number of complaints lodged with the Attorneys Fidelity Fund has increased from 12 to 32. In this regard she handed up a schedule summarizing how many payments have to date been paid out to complainants; how many claims have not been proceeded with and how many claims are still under investigation. The following appears from this schedule: Fifteen complaints are still under investigation. Six complaints have not been proceeded with. Eleven complainants have received payments from the Fund, many as a result of the Respondent masquerading as a conveyancer in circumstances when he was not even admitted as a conveyancer. The amounts paid out to complainants vary from as little as R 1164.77 to an amount of R 147 321.75. A total amount of approximately R 413 396.94 has thus far been paid out to complainants.

Evaluation of the evidence

- [39] There is little doubt on the papers before this Court that the Respondent has contravened various Rules of the Law and the provisions of the Attorneys Act. The Respondent has not even attempted to dispute the additional charges

levelled against him all of which are serious. Taking into account the totality of the Respondent's infractions there is little doubt that the Respondent has conducted himself in a dishonourable, unprofessional and unworthy manner. The Court has also taken into consideration the fact that the Respondent was uncooperative not only in the early stages of the investigation but that he had displayed a totally uncooperative attitude towards this Court. In this regard the Respondent was pertinently ordered by this Court on 29 July 2016 to file a supplementary answering affidavit in respect of the Law Society's supplementary affidavit. In order for him to do so, the matter was postponed *sine die*. Despite having been afforded an opportunity to explain his conduct, he declined to do so.

- [40] The Respondent has through his conduct displayed a total contempt for the attorneys profession, which is a honourable profession and one which is based on the principles of trust, integrity and professionalism. The manner in which the Respondent has dealt with his clients and with his trust account is simply put, reprehensible. The Respondent has further displayed a total disregard for the interests of his clients and for the Law Society. The Respondent's conduct seen as a whole has brought the attorneys profession in disrepute. See in this regard also: *Law Society of the Northern Provinces v Mametsa*.⁷

"[8] One of the important principles enshrined in the Attorneys Act is the principle that trust money does not form part of the assets of an attorney. It is furthermore trite that the unjustifiable handling of trust monies is untenable and undermines the principle that the trust account is completely safe in respect of money held therein by an attorney on behalf of another person. Furthermore, an attorney 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 court and to the profession. The law therefore expects from an attorney *uberrima fides* - which is the highest possible degree of good faith - in his/her dealings with his/her clients."

⁷ 2015 JDR 1231 (GP).

[41] I have already dealt with the further application for a postponement that was launched from the bar at the commencement of the proceedings before this Court. The manner in which the Respondent launched the application and the further desperate attempt to prevent this Court from dealing with serious misconduct on the part of the Respondent is, in my view, a further indication that he is not a fit and proper person to continue to practise as an attorney. See in this regard: *Prokureursorde aan Transvaal v Kleynhans*.⁸

“Verder moet dit nie uit die oog verloor word nie dat die Hof te doen het met 'n ondersoek van 'n dissiplinêre aard wat *sui generis* is. Hieruit volg dit dat van 'n respondent verwag word om mee te werk en die nodige toeligtig te verskaf waar nodig ten einde die volle feite voor die Hof te plaas. Blote breë ontkenings, ontwykings en obstruksiënisme hoort nie tuis by dissiplinêre verrigtinge nie.

See also *Law Society of the Northern Provinces v Sonntag*.⁹

“[18] The conduct of the respondent in defending the charges brought against her was wholly unsatisfactory. She attacked the appellant for referring to further complaints against her, accused it of unprofessional and unethical conduct, and sarcastically questioned its ability to distinguish between different kinds of offers of settlement. This was uncalled for. But the matter goes further. Far from disclosing at the outset fully and openly all the circumstances of her relationship with Van Schalkwyk and Swanepoel, the truth emerged only gradually. Initially she repeatedly denied that she and Van Schalkwyk shared fees. It was only in her affidavit responding to the appellant's replying affidavit that she admitted that this had occurred. But her admission was not unconditional but an attempt to justify her actions in some or other way. She admitted to Ms Geringer that Van Schalkwyk at some or other stage had shared an office with her. He did and indeed kept the third party files there. In her answering affidavit, however, she emphatically denied that this had

⁸ 1995 (1) SA 839 (T) at 342I – 343A.

⁹ 2012 (1) SA 372 (SCA).

been the position. But she admitted in her affidavit responding to Ms Geringer's report that Van Schalkwyk came and went to her offices as he liked until she stopped him in 2005. The minutes of the staff meeting of 5 October 2005 make clear references to Van Schalkwyk's office. Her denials that he had an office are simply not credible. The respondent denied that she had 'purchased' third party claims. She denied that she had advertised the services of Van Schalkwyk. She denied, during her interview with Geringer, that she had paid the touts employed by her. All these denials have been shown to be untruthful. She never informed the court of the real extent of the third party work undertaken by her firm, the fees earned and amounts paid to her touts. The fact that her trust account was properly kept is irrelevant. Her plea of guilty does not assist her for she attempted to withdraw it. It has been observed that '(t)he attorneys' profession is an honourable profession, which demands complete honesty and integrity from its members'. The various defences and the manner in which they were raised by the respondent cannot be said to evince complete honesty and integrity. The court below misdirected itself by not considering these factors."

- [42] This brings me to the final question namely whether the conduct of the Respondent warrants an order that he be removed from the role.

- [43] Having regard to the totality of the evidence, I am of the view that the Respondent has violated the highest possible degree of good faith that is expected from an attorney. As already pointed out, the attorney's profession is an honourable profession which demands complete honesty and integrity from its members. The Respondent has repeatedly acted in a manner towards his clients that can only be described as disgraceful.

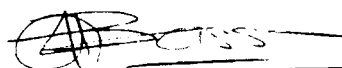
- [44] I am therefore of the view that the transgressions in this matter are so serious that it warrants the striking-off of the Respondent.

- [45] In respect of the issue of costs, it is trite that in applications of this nature, there is no *lis* between the Law Society and the Respondent and that the Law Society is performing its statutory function of placing facts before this Court to

exercise its disciplinary powers over truant practitioners. As such the Law Society is entitled to costs.

Order

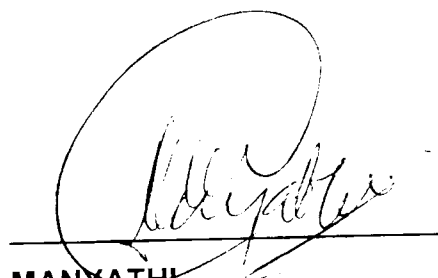
[46] In the event the Draft Order marked "Annexure X" is made an order of court.

A handwritten signature in black ink, appearing to read 'AC Basson', written over a horizontal line.

AC BASSON

JUDGE OF THE HIGH COURT

I agree and it is so ordered:

A handwritten signature in black ink, appearing to read 'Manyathi', written over a horizontal line.

MANYATHI

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant	:	Ms Magardie
Instructed by	:	Damons Magardie Richardson Attorneys
For the respondent	:	In person

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

Case No: 6838/2014

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

LLENGA PAULUS MONAMA

Respondent

~~DRAFT ORDER OF COURT~~

Having read the papers filed of record and having heard the attorney for the Applicant,

IT IS ORDERED

1. That the name of **LLENGA PAULUS MONAMA** (hereinafter referred to as the Respondent) be removed from the roll of attorneys of this Honourable Court;
2. That Respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court;

3. That in the event of the Respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court;
4. That Respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof;
5. That Johan van Staden, the head: members affairs of applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of Respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with Respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by respondent 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:

- 5.1 immediately to take possession of Respondent's accounting records, records, files and documents as referred to in paragraph 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 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 interests of persons having lawful claims upon the trust account(s) and/or against respondent in respect of monies held, received and/or invested by respondent 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 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 Respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon 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;

- 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 respondent 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 creditors' right of access to the civil courts;
- 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 control of the fund;
- 5.7 in the event of there being any surplus in the trust account(s) of respondent 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 No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by

respondent to applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of respondent, 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 Attorneys 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 attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

5.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:
- 6.1 any monies received, held or paid by respondent for or on account of any person while practising as an attorney;
 - 6.2 any monies invested by respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;
 - 6.3 any interest on monies so invested which was paid over or credited to respondent;
 - 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5 any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 6.6 any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by respondent 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 respondent as or on behalf of the liquidator; and
- 6.9 respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.
7. That should respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon his or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.
8. 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 has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

8.2 require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to respondent 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 he considers appropriate; and

8.4 wind-up of the respondent's practice.

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

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

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

- 9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;
 - 9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;
 - 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
 - 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and
 - 9.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.
10. That Respondent be and is hereby directed:
- 10.1 to pay, in terms of section 78(5) of Act No 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;
 - 10.2 to pay the reasonable fees of the auditor engaged by Applicant;
 - 10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

- 10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 10.6 to pay the costs of this application on an attorney-and-client scale.
11. That, if there are any trust funds available the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;
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;

BY ORDER OF THE COURT

REGISTRAR