



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 2086/2015

In the matter between:-

THE LAW SOCIETY OF THE FREE STATE

APPLICANT

and

MOEKETSI PAULOS NTJABANE

RESPONDENT

CORAM:

MOLOI, ADJP et REINDERS, J

HEARD ON:

01 DECEMBER 2016

MOLOI, J

- [1] This is an application for the removal of the Respondent's name from the roll of attorneys with usual prayers in such a case. The application is not formally opposed though the respondent made an appearance when the matter first served before the court on 2 June 2016 and certain orders were made. The matter was postponed a number of times thereafter when certain further orders were made in terms of

which the respondent was to file his opposing papers, which he did not. This aspect will be dealt with in detail hereunder.

[2] The basis for the application is primarily the failure of the respondent to file the required audit reports to enable him to obtain Fidelity Fund Certificates for the periods 1 March 2012 to 28 February 2013 and 1 March 2013 to 28 February 2014 and subsequent periods to date as required by section 41 (1) and (2) of the Attorneys Act No.53 of 1979. In addition the respondent failed to appear before the applicant's Council on 28 November 2014 to provide reasons why his name should not be removed from the roll of attorneys.

[3] The respondent continued to practice or acted as a legal practitioner for own account without a Fidelity Fund Certificate required by section 41 (1) and (2) of the Attorneys Act since 2012.

3.1 After his appearance in this court on 2 June 2016 the application was postponed to 28 July 2016 at his instance.

3.2 On 28 July 2016 the application was postponed to 22 September 2016 and the respondent was ordered to file the audit reports of his firm for the years 2013, 2014, 2015 and 2016 not later than 1 September 2016; to file his answering affidavit not later than 2 September 2016; he was suspended from practising as an attorney and interdicted to operate his trust account

held at Standard Bank with Account number 041050746 pending the finalisation of this application. None of the above orders were complied with.

3.3 On 22 September 2016 he again appeared in court and alleged he could not comply with the order made on 28 July 2016 as he was incarcerated. The application was postponed to 13 October 2016 as a final postponement and ordered to supply proof of his alleged incarceration not later than 6 October 2016 and to deliver documents as ordered on 28 July 2016 and file the audit reports and answering affidavit not later than 6 October 2016. None of the above orders were complied with.

3.4 On 13 October 2016 the application was postponed to 17 November 2016 and the respondent was ordered to file his answering affidavit and audit reports by not later than 10 November 2016 and heads of argument not later than 14 November 2016 at 12h00. None of the above orders were complied with.

3.5 On 17 November 2016 the respondent failed to appear in court. On 16 November he filed a letter of even date to which he attached a note by Drs Bester and Bosch dated 25 October 2016 and a Patient Treatment Card dated 31 October 2016. In his letter he claimed he was due for medical check-up on 22 November 2016. On the strength of the medical records the application was finally postponed to 1 December 2016.

4. On 1 December 2016 the respondent appeared in person and applied for a further postponement of the application hearing alleging that in October 2016 he had been diagnosed with chest illness and could consequently not prepare and file the answering affidavit. Regard being had to the fact that the matter was first on the roll on 2nd June 2016 and was postponed on several occasions as set out in paragraph 3 above, and nothing had been done, the diagnose of October 2016 could not be sufficient reason to justify a further postponement. The application was dismissed and the hearing was conducted.
5. From the above it is clear that the respondent practised as an attorney without a Fidelity Fund since 2012 and continued to do so to date in breach of a clear requirement as set out in section 41 (1) and (b) of the Attorneys Act No 53 of 1979. His conduct as set out above clearly shows that he is defiant of the law, the Council of the Law Society by failing to appear before it when legally obliged to do so and the court by persistently ignoring the orders of court and is thus not a fit and proper person to continue practise as an attorney of this court as envisaged in section 22(1) of the Attorneys Act No 53 of 1979. There is nothing before the court suggesting any other sanction than to remove his name from the roll of attorneys. On 28 July

2016 this court had ordered his suspension from practise and nothing has been placed before the court to suggest he complied with that order as on 16 November 2016 when he wrote about his illness he still used his official letterheads indicating he was still a practising attorney. I am satisfied that the requirements as laid out in the Law Society of the Cape of Good Hope vs Budricks, 2003 (2) SA 11 at 13J – 14B are met.

In consequence the following orders are made:

1. That the respondent's name be removed from the roll of attorneys.
2. Prayers 2 – 13 of the notice of motion are granted.
3. The respondent is ordered to pay the costs of this application including the costs occasioned by the various postponements thereof.

MOLOI, ADJP

I concur.

REINDERS, J

On behalf of the applicant:

Adv M LOUW

Instructed by

MTHEMBU & VAN VUUREN INC

BLOEMFONTEIN

On behalf of the respondent:

Mr MP NTJABANE

NTJABANE ATTORNEYS

BLOEMFONTEIN