IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

06/02/2015.

CASE NO: 64651/2014

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

06 February 2015 ....

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES Applicant

and

LOUIS LOURENS Respondent

JUDGMENT

MUDAU AJ:

[1] This is an application by the applicant that the name of Louis Lourens be struck off the roll of attorneys of this court. On 20 November 2014 a copy of this application was personally served on the respondent. A Notice to Defend was filed by the respondent but he failed to file any further opposing affidavits. The matter will accordingly proceed on an unopposed basis.

[2] It is common cause that the respondent was suspended from practice in terms of a court order of this court dated 26 September 2014, on an unopposed basis.

[3] It is further common cause that the suspension order was granted after the respondent failed to submit his Rule 70 auditors report for the period ending 28 February 2013 to the applicant. This report had to be submitted on or before 31 August 2013. Due to his failure to submit the Rule 70 report, the respondent was notified to attend disciplinary proceedings. He failed to attend such proceedings. He further failed to reply to correspondence from the applicant. The respondent's failure to submit his Rule 70 report is a criminal offence in terms of section 81(10) of the applicant's rules. Every attorney who practices for his own account is obliged in terms of the legislation to cause his auditor to lodge a report with the applicant within six months of the annual closing of the accounting records. This requirement is to ensure that there should at all relevant times be sufficient funds in an attorneys trust bank account to cover his liability to trust creditors.

[4] In terms of section 41(1) of the Attorneys Act, no practitioner shall practice or act as a practitioner for his own account or in partnership unless he is in possession of a fidelity fund certificate. This stipulation is peremptory by nature. A fidelity fund certificate is mainly issued on the strength of an unqualified auditors report as provided for in Rule 70. According to the provisions of Rule 89.11 the respondent rendered himself guilty of unprofessional, dishonourable and unworthy conduct by failing to submit his Rule 70 report. As a result of the respondent's failure to submit his Rule 70 report for the period ending 28 February 2013, the respondent was not issued with a fidelity fund certificate for 2014. The respondent nevertheless continued practicing as an attorney without a fidelity fund certificate from 1 January 2014 until he was suspended. The respondent's failure to submit his report placed his trust creditors at risk.

[4] In the meantime, the applicant received complaints against the respondent. The applicant instructed a legal official in the employ of the applicant's monitoring unit, Mrs Magda Geringer ("Geringer"), to visit the respondent and to investigate why no Rule 70 auditors report had been submitted. Geringer submitted her report on 18 July 2014. It appears from her report that initially the respondent did not cooperate fully with Geringer to enable her to conduct her investigation. She had a subsequent consultation with the respondent on 1 April 2014. The respondent then admitted that his accounting records were not updated but he undertook to do so. He further admitted that he did not execute his instructions to attend to the registration of a transfer which I will refer to later on. It was then agreed that Geringer would attend at his offices at a later stage to inspect his accounting records. Geringer then again struggled to arrange a meeting with the respondent for the inspection. At a further meeting on 25 June 2014 the respondent admitted to Geringer that he was being dishonest and that there was a trust deficit of approximately R2.5 million in his bookkeeping. He further admitted that his accounting records had still not been updated, and that his failure to do so was as a result of his knowledge of the trust deficit.

[5] Based on the complaints received and the certificate of balance obtained from the respondent's bank, Geringer was eventually able to calculate a trust deficit in the amount of R2 453 802, 08. During her investigation, she also established that the respondent acted without having instructions from his clients to do so, that he misappropriated trust funds and that he failed to execute his instructions. Geringer concluded that the respondent contravened several provisions of the applicant's rules and the Attorneys Act.

[6] In respect of the property transaction referred to above, the Law Society received complaints from both the seller, Fikkert, and the purchaser, Kohler. According to the complaint, the amount of R1.3 million was deposited by Kohler into the respondent's trust banking account. The respondent failed to attend to the transfer of the property concerned and his mandate was subsequently terminated. He failed to pay the amount previously received from Kohler to the new firm of attorneys that was instructed to further attend to the registration of the transfer. During the investigation, it was discovered that the respondent advanced an amount of R300 000 to Fikkert without Kohler's knowledge or consent. Summons was subsequently issued against the respondent for the recovery of the amount of R1.3 million plus interest and the matter is still pending. A further complaint was received from Mr ZJ Abdoola. Abdoola purchased a property and an amount of R1 055 810 was paid into the respondent's trust banking account during April 2013 and May 2013 respectively. The payment represented the purchase price and transfer costs. The respondent failed to attend to the registration of the transfer of the property. The respondent admitted that the property was never transferred into Abdoola's name. Abdoola's money is no longer available in the respondent's trust banking account.

[7] Another complaint was received from Mr G Kitsi. Kitsi paid an amount of R35 000, 00 into the respondent's trust banking account during March 2013 and April 2013 respectively. The said amount related to an immovable property which Kitsi had purchased. The respondent failed to attend to the transfer of the property into the name of Kitsi. Kitsi's moneys are also not available in the said trust banking account.

[8] Mr PM Makhutle complained that he deposited an amount of R50 000, 00 into the respondent's trust banking account during 2011. The respondent never attended to

the registration of the transfer of the property into the name of Mr Makhutle. He also failed to repay Makuthle's money. The money is no longer available in the respondent's trust account.

[9] Mr O Haggard, on behalf of Contrada Africa paid an amount R12 500, 00 into the respondent's trust banking account during April 2014. The amount had to be refunded to Contrada Arica within two days after request for such refund had been made. Although Contrada Africa made such a request the respondent failed to make the repayment. These moneys are no longer available in the respondent's trust banking account.

[10] On inspection of the respondent's trust banking account at the Brits branch of Standard Bank on 8 April 2014, it appeared that there was only an amount of R7, 92 available.

[11] It is abundantly clear that there is a trust deficit in the amount of R2 453 802, 08 in the respondent's bookkeeping. I am satisfied that it has been proved on a balance of probabilities that the respondent contravened several provisions of the Attorneys Act and the Law Society rules. I do not intend to specify all these contraventions. The applicant contends that the respondent can no longer be regarded as a fit and proper person to continue to practice as an attorney. Accordingly, the applicant seeks an order that the respondent's name be struck from the roll of attorneys, coupled with the remainder of the original order that is normally made in these matters.

[12] The question whether an attorney is no longer a fit and proper person to practice as such lies in the discretion of the court.(Law Society of Good Hope v Budricks 2003

(2) SA 11 (SCA); Hassim v Incorporated Law Society of Natal 1977 (2) SA 757 (A) and Jasat v Natal Law Society 2000 (3) SA 44 (SCA)).The appropriate sanction, if the court finds that such a person is not a fit and proper person, is either to suspend him from practice or strike his name from the roll (A v Law Society of the Cape of Good Hope, 1989 (1) SA 849 (A) at 851 A-F). In the present matter the Law Society, as *custos morum* of the profession, placed certain facts before the court for consideration. It is trite that the facts on which the court exercises its discretion are to be established on a balance of probabilities. The facts are to be considered in their totality (Malan v the Law Society of the Northern Provinces (2009) 1 All SA 133 (SCA).

[13] An attorney's failure to keep proper accounting records is a serious contravention and an attorney who fails to comply with this requirement is liable to be struck off the roll or to be suspended form practice (Cirota and Another v Law Society, Transvaal 1979 (1) SA 172 (A) at 193). The approach of the court in relation to trust shortages and the duty of an attorney with regard to trust money was duly stated in *Law Society Transvaal v Matthews*, 1998(4) SA 389 (T) at 393 I – J where it was held that where trust money is paid to an attorney it is his duty to keep it in his possession and to use it for no other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have available liquid funds in an equivalent amount. The very essence of a trust is that of absence of risk. It is clear in this matter that the respondent has failed to keep proper accounting records. By so doing; he, rendered himself guilty of dishonourable or unworthy conduct (in his contravention of the attorney's act and (or) the applicant's rules).

[14] After considering the facts placed before me and the applicable law, I have no doubt that the respondent can no longer be regarded as a fit and proper person to practice as an attorney. Accordingly, his name should be struck from the roll of practicing attorneys. His name should also be removed from the roll as a practicing conveyancer.

I THEREFORE PROPOSE THE FOLLOWING ORDER:

1. That the name of Louis Lourens is struck off the roll of attorneys and as conveyancer of the High Court of South Africa and wherever his name is registered.
2. A order is made in terms of a draft marked "X".

MUDAU AJ
ACTING JUDGE OF THE GAUTENG DIVISION OF THE HIGH COURT

I agree and it is so ordered.

ISMAIL J
JUDGE OF THE GAUTENG DIVISION OF THE HIGH COURT

Date of Hearing: 6 February 2015

Date of Judgement: 6 February 2015

On behalf of the Applicant: Adv M Rooyen

Instructed by: Rooth and Wessels INC.

On behalf of the Respondent: No appearance