REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 47205/2013

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

24/4/2015

IN THE MATTER BETWEEN:

THE LAW SOCIETY OF THE NORTHERN PROVINCES **APPLICANT**

and

JOHN GRAHAM HUNTER

RESPONDENT

JUDGMENT

KUBUSHI, J

[1] The purpose of this application is for the applicant to submit to this court facts which the applicant contends constitute deviation by the respondent from the standards of professional conduct that makes him not a fit and proper person to continue to practise as an attorney; and, which, justify an order that the respondent's name be struck from the roll of attorneys; alternatively, that the respondent be suspended on an urgent basis pending finalisation of the application for the removal of his name from the roll of attorneys; alternatively, that the respondent be suspended in his practice on an urgent basis on such terms and conditions as the court may deem fit.

[2] The history of this matter is that the application was initially brought on an urgent basis and was enrolled for 27 August 2013. The application was served on the respondent on 5 August 2013 and on 15 August 2013 the respondent delivered his notice of intention to oppose the application and subsequently filed his answering affidavit. On 27 August 2013 the matter was postponed *sine die* and the respondent ordered to provide the applicant access to his practice's accounting records. Further papers were exchanged between the parties. The matter was set down for hearing for 9 May 2014 and on that day, at the behest of the respondent the matter was again postponed *sine die*. The matter was again set down for hearing on 13 March 2015.

[3] At the beginning of the hearing, counsel representing the respondent applied for the postponement of the matter from the bar. No formal and substantial application was filed. The applicant's counsel opposed the application for postponement. The respondent's counsel informed us that he had only been briefed and instructed on the morning of the date of hearing, to appear and apply for postponement. From the questions put to counsel by the bench in trying to ascertain the reason why the respondent would want the matter to be postponed without having filed a formal application, it emerged that counsel was not properly briefed as he seemed not to have knowledge of the matter. In fact, counsel conceded that he has not read the papers but only appeared to apply for the postponement.

[4] I should pause here and mention that by the time the matter was placed before us the respondent had not filed his heads of argument. I actually became aware as early as Monday 9 March 2015 that the respondent's heads of argument have not been filed. I instructed my clerk to contact the respondent and inform him to file his heads of argument. My clerk, and Molefe J's clerk were in constant contact with the respondent reminding him to file the heads of argument, but none were filed. Of importance is that during all the time of contact with the respondent, neither Molefe J's clerk, nor my clerk, were informed that an application would be brought for the postponement of the matter. Having deliberated on the issue, a decision was taken not to postpone the matter. The respondent's counsel did not have instruction to proceed with the matter on the merits and, as such, the matter was proceeded with in the absence of the respondent.

[5] Even though the respondent was not represented at the hearing, in deciding this matter I have to consider all the evidence that is before us.

[6] The respondent, John Graham Hunter, was admitted as an attorney of this court on 27 September 1983 and his name is still on the roll of attorneys. At the time of the transgressions he was practising as an attorney of this court for his own account and as a single practitioner under the style Hunter Attorneys.

[7] It is the applicant's contention that the respondent has contravened certain of the provisions of the Attorneys Act No 53 of 1979 (the Act) and certain of its Rules promulgated in terms of s 74 of the Act, which conduct makes the respondent not a fit and proper person to continue to practice as an attorney.

[8] The question whether an attorney is no longer a fit and proper person to continue to practice lies in terms of s 22 (1) *(d)* of the Act, in the discretion of the court.[1]

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1 See Law Society of the Cape of Good Hope v Budricks 2003 (2) SA 11 (SCA).

[9] In exercising its discretion, in applications of this nature, a court is in effect called upon to consider a three-stage enquiry that requires it to enquire whether: [2]

9.1 The applicant has established the offending conduct on which it relies;

9.2 The conduct established indicates that the attorney is not a fit and proper person to practice; and

9.3 The attorney should be struck from the roll of attorneys or suspended.

[10] The first issue to be determined is whether the applicant has established the offending conduct on which it relies, on a balance of probabilities. Put differently, did the respondent commit the offending conduct as alleged by the applicant?

[11] The facts and circumstances which prompted the applicant to launch the application include, *inter alia,* the following:

11.1 that, the respondent failed to account to a client. He delayed the payment of trust funds. There is a deficit in the respondent's bookkeeping and the respondent most probably misappropriated trust funds.

11.2 that, the respondent failed to reply to the correspondence addressed to him by the applicant and he failed to cooperate in the proposed inspection of his accounting records.

11.3 that, the respondent misled the court in an affidavit deposed to by him. He further failed to honour an undertaking to keep certain funds available in his trust banking account.

11.4 that, the respondent failed to give proper attention to the affairs of his client. He transferred an immovable property into the name of a person other than the buyer.

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2 See Botha and Others v Law Society, Northern Provinces 2009 (3) SA 329 (SCA) at para 3.

[12] In his answering affidavit, the respondent submits that he will in his evidence demonstrate that he was not guilty of any financial impropriety, and in particular that there was no trust deficit in his bookkeeping; he did not misappropriate trust funds or other funds of any nature; he did not place his trust creditors and the Attorneys Fidelity Fund at risk – his trust account is in order and has a credit, so he contends.

[13] The facts and circumstances in respect of the issues raised by the applicant and as stated in paragraph [11] of this judgment, emanate from complaints lodged with the applicant by Mr D E A Farinha (Mr Farinha), Mr H Teladia (Mr Teladia) and Ms Lisa Goosen (Ms Goosen).

THE COMPLAINT BY MR D E A FARINHA

[14] In April 2012 the applicant received a complaint from Mr Farinha. Mr Farinha alleged that he approached the respondent's firm in 2007 and instructed the respondent to act on his behalf and to acquire a member's interest in B & T Plumbing CC. He paid an amount of R1 300 000 into the respondent's trust banking account. There was a delay in the matter and Mr Farinha, as a result, approached the firm Michael Salomon & Associates for assistance. Mr Farinha instructed Michael Salomon & Associates to advise the respondent that he has terminated his mandate and request the respondent to hand over all the documentation relating to Mr Farinha's matter to them.

[15] The respondent's response was that he will hand over the relevant documents once he had prepared a statement of account and received payment from Mr Farinha. The respondent, however, failed to render the statement of account and to file a notice of withdrawal as attorney of record. He, further, failed to respond to various subsequent telephone messages left for him by Michael Salomon & Associates; this in contravention of rule 89.23 of the applicant's Rules.

[16] Michael Salomon & Associates reported the matter to the applicant alleging that the respondent failed to pay over an amount of R1 200 000 belonging to Mr Farinha to them. The applicant in turn appointed Mr Deleeuw Swart (Mr Swart), a chartered

accountant, to conduct an inspection of the respondent's accounting records and practice affairs and to investigate Mr Farinha's complaint.

[17] After the investigation, Mr Swart found that the respondent contravened at least the following provisions of the Act and of the applicant's Rules:

17.1 Rule 89.23 of the applicant's Rules due to the fact that the respondent failed to reply to correspondence addressed to him;

17.2 Section 70 of the Act in that the respondent failed to comply with the direction of the applicant to produce his accounting records to Mr Swart for purposes of an inspection thereof;

17.3 Rule 89.25 of the applicant's Rules due to the fact that the respondent failed to comply with an order, requirement or request of the Council of the applicant; and

17.4 Section 78 (1) of the Act read with rule 69.3.1 of the applicant's Rules due to the fact that there was a trust deficit in the respondent's bookkeeping.

[18] Most importantly, Mr Swart found that Mr Farinha's monies were not available on trust. Mr Swart based his findings on the entries contained in the respondent's own records and the auditor's report that certified that Mr Farinha's monies were not available on trust.

[19] The question is, did the respondent contravene these provisions of the Act and/or Rules of the applicant?

Contravention of Section 78 (1) of the Act

[20] As regards the contravention of s 78 (1) of the Act, the respondent denies having transgressed the provisions of the said section. His defence and/or explanation is that he, on the instructions of Mr Farinha, invested Mr Farinha's monies in a money market account with First National Bank (FNB), for Mr Farinha's benefit. In support of this allegation, the respondent provided a bank statement reflecting the availability of the monies in the said

account. There is, however, no indication at all that the funds were invested on behalf of Mr Farinha. The account was not opened and held in Mr Farinha's name but in the name of the respondent. The account itself does not comply with the requirements of the provisions of the Act which authorises the investment of trust funds into a separate account for the benefit of a client, namely, s 78 (2A) of the Act. In order to circumvent this challenge, the respondent, in his supplementary affidavit, which I take it to be his answering affidavit to the applicant's supplementary founding affidavit, attached a letter from FNB confirming that the money market account was opened in terms of s 78 (2a).

[21] Section 78 (2A) of the Act provides that any separate trust savings or other interest bearing account which is opened by a practitioner for the purpose of investing therein, on the instructions of any person, any money deposited in his or her trust account shall contain a reference to the subsection.

[22] It is my view that the provisions of s 78 (2A) of the Act are imperative and should be complied with in order for an account to fall within the ambit of the subsection. As such, failure of an investment account to contain a reference to the subsection disqualifies such account from being an investment for the benefit of a client as envisaged in the subsection.

[23] It is common cause that Mr Farinha was a trust creditor of the respondent's firm at all material times hereto. It is also not in dispute that the respondent had removed Mr Farinha's monies from the firm's trust account and invested them in a money market account. In terms of the subsection, the choice of bank and the investment vehicle into which the funds could be invested is at the discretion of the practitioner handling the funds. The investment vehicle can be either a savings account or any other interest bearing account. In this instance, the respondent at his discretion chose to invest the money in a money market account held in FNB. However, in order for the money market account to comply with s 78 (2A) of the Act, it should contain a reference to the subsection.

[24] It is common cause that the statement of account on which the respondent relied to support his assertion that the money was invested in a s 78 (2A) investment account, does not contain a reference to the subsection. The applicant's contention is that the investment should not be regarded as having been invested in terms of the subsection and urges the court to accept Mr Swart's findings that there was as a result of the removal of this money from the respondent's trust account, a deficit in the respondent's bookkeeping. I agree with the contention by the applicant.

[25] The respondent seeks to bring the money market account into the ambit of s 78 (2A) by relying on a letter from FNB which confirms that the account was opened in terms of the subsection. Unfortunately, the letter refers to s 78 (2a) which is a different subsection that serves a totally different purpose. But, the respondent provides an explanation that the reference to s 78 (2a) was an error by the bank which he failed to pick up at the time. According to the respondent, the intention was for the letter to have reference to s 78 (2A) and not s 78 (2a) as the funds were invested on behalf of a client for the client's benefit; and he has since requested the bank to rectify the error.

[26] I am prepared to accept that a typographical error might have occurred when the letter was typed. It is easy for such a typo to occur and as such the respondent's explanation is reasonable in that regard. However, the typo does not resolve the respondent's challenge, which is that the money market account which the respondent chose as a vehicle to invest the monies does not contain a reference to the subsection. As I have already stated, the provisions of the subsection are peremptory and requires the account to contain such reference. In my view, whether or not it was the respondent's intention to open the account in terms of the subsection is not the test. What is required is for the account to contain reference to the subsection in order to distinguish it as an investment account for the benefit of the client in terms of the Act. The money market account does not contain the reference and it cannot therefore, be regarded as an investment account for the benefit of a client in terms of the Act.

[27] The respondent's challenge is exacerbated by the findings of the respondent's auditors who certified and reported to the applicant that Mr Farinha's monies were not available on trust.

[28] It is trite that all accounting records and entries made in relation to a s 78 (2A) investment must form part of the attorneys bookkeeping records and must also be part of the audit carried out by the auditor on whose report a Fidelity Fund certificate is issued. The effect of s 78 (2A) should be that a client's trust funds invested in terms of a client's instruction should at all times whilst so invested retain their trust identity.

[29] The funds lost their trust identity when the respondent removed them from his firm's trust account and placed them in an account which did not contain reference to the subsection. When the respondent's auditors reported that Mr Farinha's monies were not on trust, it meant that there was a deficit in the respondent's trust account. This was so because the funds having been moved from the trust account and placed in an account which did not contain a reference to the subsection were no longer trust funds when in fact they were supposed to be trust funds. Consequently, I am satisfied that there was a deficit in the respondent's firm's bookkeeping.

[30] Technically, the respondent may not have misappropriated the funds which were not on trust, but, the respondent placed Mr Farinha, his trust creditor, and the Attorneys Fidelity Fund at risk. By removing Mr Farinha's monies from the trust account and placing them in a non-trust investment account, anything detrimental could have happened to the monies whilst they were so removed. The very essence of a trust fund is the absence of risk and the confidence created thereby.

[31] It is thus evident, that, by placing the client's monies in the money market account, which is an ordinary account, the respondent contravened the provisions of s 78 (1) of the Act.

<u>Contravention of Section 70 of the Act</u>

[32] As already stated in paragraph [16] of this judgment due to the complaint of Mr Farinha, the applicant appointed Mr Swart to investigate the complaint. The applicant's contention in this regard is that the respondent failed to cooperate with the applicant in its investigations of the complaint by Mr Farinha, when the applicant sought to investigate the respondent's accounting records. The respondent also failed to appear before the disciplinary committee of the Council of the applicant.

[33] The respondent does not in his answering affidavit deny that he failed to cooperate with the applicant in its investigation, but, avers that his reasons for delaying the inspection of his books with Mr Swart was simply that he was suspicious and did not know the purpose for which Mr Swart wished to inspect his books. This is not acceptable.

[34] The respondent is a very senior member of the profession. He has been practising for 32 years as he says. He should as such be knowledgeable about the Act and the Rules of the applicant. In his own version, the respondent admits having served on the disciplinary committee of the Council of the applicant on a number of occasions and has even chaired that committee. He was, thus, better placed to understand the operations and the requirements of that committee. His explanation is in my view unacceptable and unreasonable. He ought to have known that when the committee has resolved to inspect his books he should his books available to Mr Swart immediately.

[35] His further assertion that the inspection of his books was inappropriate as the complaint was purely a fee dispute and that the complaint should have served before a fee assessment committee, is misconceived. The respondent fails to take into account that the complaint that was received by the applicant was in respect of his failure to render a statement of account to Mr Farinha and to withdraw as attorney of record. Mr Farinha did not complain about the fee charged by the respondent, he could not at that stage have done so since the respondent had not furnished him with his statement of account, the very issue he was complaining about.

[36] The respondent is, therefore, guilty of contravening s 70 of the Act read with rule 89.25 of the Rules of the applicant.

Contravention of Rule 89.23 of the Applicant's Rules

[37] There is no contestation in regard to the respondent's contravention of rule 89.23 of the applicant's Rules.

[38] The respondent pleaded guilty to a contravention of rule 89.23 in that he failed to answer to or appropriately deal within a reasonable time with any communication which reasonably required a reply or other response. He asserts, however, that he responded fully and comprehensively to the complaint albeit not within a reasonable time.

Mr H Teladia's Complaint

[39] The applicant received another complaint from Messrs Tucker Incorporated attorneys acting on behalf of Mr H Teladia (Mr Teladia).

[40] Mr Teladia is a member of Alpine Valley CC (Alpine Valley). Alpine Valley and Tevmor CC (Tevmor) entered into a written agreement in respect of the purchase of an immovable property by Alpine Valley. The agreement was subsequently amended and a further agreement was concluded where the purchase price was R1 500 000. The respondent prepared the agreement and was instructed to attend to the registration of transfer of the property. According to the applicant, Alpine Valley paid amounts totalling approximately R300 000 to or on behalf of Tevmor in respect of the purchase price. The respondent was fully aware of this payment. The property was for reasons unknown to Mr Teladia, never transferred to Alpine Valley but transferred to Mr Ebrahim Hassam and Ms Faaiza Hassam. Mr Teladia then instructed Tuckers Incorporated to establish what has transpired and why the property was not transferred to Alpine Valley.

[41] It is also alleged that an amount of R50 000 was paid to the respondent for purposes of a deposit in respect of costs in a proposed High Court application to be instituted against Mr E Hassam and Ms F Hassam. Tuckers Incorporated was also instructed to uplift the contents of the files relating to the matter and to request the respondent to account to them for his fees to date and pay over the available balance.

[42] Tuckers Incorporated addressed a number of letters to the respondent which went unanswered. A complaint was as a result made to the appellant. The appellant also sent numerous letters to the respondent, which, were also not answered. Consequently the respondent was summoned to appear before a disciplinary committee of the Council of the applicant in order to answer to various charges relating to his failure to respond to correspondence. The respondent pleaded guilty to the charges and was fined R2 500 *per* letter to which he did not respond to.

[43] The respondent's submission is that he became aware that the property he was to transfer to Alpine Valley had been transferred to a third party *per* chance as he was doing another transaction with the City Council. He informed Mr Teladia that it will no longer be possible to transfer the property to Alpine Valley because it had already been transferred to a third party. Mr Teladia was in any event already aware of the prior sale of the property and the transfer when he informed him.

[44] The respondent in his answering affidavit denies having received any money in respect of the purchase price or the High Court matter on behalf of Mr Teladia or Alpine Valley. He, however, explained that the amount of R50 000 he received from Mr Teladia was on behalf of Mrs Papa. According to the respondent, he received instructions from Mrs Papa to institute action against Mr and Ms Hassim in respect of a cancelled agreement which was between them. By agreement between Mr Teladia and Mrs Papa, Mr Teladia paid the R50 000 to him on behalf of Mrs Papa. He contended further that he had no obligation to account to Mr Teladia in respect of that R50 000 as it was paid on behalf of Mrs Papa.

[45] There is an obvious dispute of fact in this complaint. Consequently, I will have to decide the matter on the version of the respondent and the common cause facts. It is my view that the explanation by the respondent as to why he could not transfer the property is satisfactory. The evidence shows that he became aware of the transfer of the property to the third party and informed Mr Teladia. Mr Teladia was aware of the prior sale of the property and the transfer to the third party.

[46] As regards the amount of R300 000 it is alleged was paid to the respondent towards the purchase price, it is my opinion that the money was not paid to him. Mr Teladia in his complaint states only that 'with the knowledge of Messrs Hunter Attorneys, Alpine Valley paid various amounts totalling R300 000 to or on behalf of Tevmor CC on account of the purchase price.' To me this does not indicate that the money was paid to the respondent. There is also no documentary proof of payment, like for instance, a receipt or invoice, to prove that he paid the amount to the respondent. I also have to accept the respondent's evidence that the amount of R50 000 was paid on behalf of Mrs Papa even though it was paid by Mr Teladia as it is alleged.

[47] It is common cause that Mr Swart had an opportunity to discuss the complaint with the respondent and to scrutinize the firm's trust cash book and was unable to identify any deposit relating to Alpine Valley. He could not find an account for Alpine Valley in the respondent's trust creditors, as well.

[48] What remains of this complaint is the failure by the respondent to reply to the correspondence of the applicant, which he admitted.

[49] The applicant received a complaint from Lisa Goosen. Ms Goosen is a business woman and the chief executive officer of Tintswalo Property Group (Pty) Ltd (Tintswalo), which is a property managing company of the Lonehill shopping Centre. The legal department of Tintswalo instructed Mr L Norwitz of Norwitz Attorneys to proceed with an application for the ejectment of Markella Kyrkou (Mr Kyrkou) and Nicholas Sotheriades (Mr Sothariades) from the premises for none payment of rent.

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[50] Mr Kyrkou and Mr Sothariades instructed the respondent to act on their behalf to oppose the relief sought by Tintswalo. The application was heard in the South Gauteng High Court (as it then was). Pursuant to the judgment being reserved, Tintswalo launched another application for the ejectment of Mr Kyrkou and Mr Sothariades from the premises. This application was also opposed and the respondent acted on behalf of Mr Kyrkou and Mr Sothariades. The second application was heard before the judgment in the first application could be delivered. The relief sought in the second application was granted and ordered the ejectment of Mr Kyrkou and Mr Sothariades from the premises.

[51] Subsequent to the judgment in the second application, Mr Kyrkou signed an acknowledgement of debt in favour of Tintswalo. The respondent deposed to a confirmatory affidavit confirming his participation in the conclusion of this acknowledgment of debt and later wrote a letter denying his involvement in the acknowledgement of debt.

[52] Mr Kyrkou and Mr Sotheriades deposed to an affidavit in the second application wherein they stated that the rentals from May to September 2012 stand to the credit in the respondent's trust account which will be paid over immediately upon a positive finding in the first application. The respondent deposed to a confirmatory affidavit confirming that he holds an amount of R206 910 to the credit of Mr Kyrkou and Mr Sothariades which shall on their instructions paid over to Tintswalo. The respondent later sent a letter to Tintswalo's attorneys advising them that he no longer held that amount in his trust banking account.

[53] The applicant's contention is that this conduct of the respondent appears to be unprofessional, negligent, improper and unethical.

[54] The respondent in his answering affidavit denies that he had anything to do with the acknowledgement of debt, his involvement according to him was as set out in the answering affidavit. He contended that the acknowledgment of debt was not drafted by him and that he did not advice his clients in respect thereof. He submitted further that the payment of the amount to Tintswalo was conditional on the dismissal of the first application and since that application was not dismissed the precondition to his instructions to pay over the money of R209 910 was not fulfilled.

[55] Even in this complaint there is a clear dispute of fact which I have to resolve by deciding the matter on the version of the respondent. As such this complaint should therefore be dismissed.

Conclusion

[54] I am, therefore, satisfied that the applicant has been, on a balance of probabilities, able to establish the following offending conduct:

54.1 Contravention of s 78 (1) of the Act.

54.2 Contravention of s 70 of the Act read with rule 89.25 of the applicant's Rules.

54.3 Contravention of rule 89.23 of the applicant's Rules.

B. The second issue is whether the respondent is a fit and proper person, to continue to practice as an attorney.

[55] The conduct expected of an attorney in terms of the Act is that of a fit and proper person. The phrase 'fit and proper person' is not defined in the Act. However, courts have over the years in numerous cases attempted to give meaning to this phrase. Some characterisation such as integrity, honesty, worthiness, reliability, good faith etc. has been

given by the courts. It is against this depiction that the conduct complained of should be weighed. [3]

[56] My view is that the conduct complained of by the applicant does not depict the respondent as dishonest or an unworthy person to remain in the ranks of the profession nor can it be said that his conduct is one of the worst. I would not say that the conduct complained of reflects upon his character as such, but, may be oversight on his part. The respondent has been an attorney since 1983 that is approximately 32 years at the time this matter was heard. This is the first time any allegations of impropriety were brought against him.

[57] The main transgression in this instance revolves around the contravention of the provisions relating to the trust account and the investment of trust monies. It is so that a large amount of money, R1 200 000, in respect of Mr Farinha's complaint was involved in this matter. A finding was also made that the provisions of s 78 of the Act were contravened. What made the transgression more serious is that Mr Farinha and the Fidelity Fund were put at risk. But, sight should not be lost that in the ultimate end the funds were not misappropriated. The whole amount due to Mr Farinha including interest accrued during the investment of the funds less what was due to the respondent has been paid back to Mr Farinha who eventually withdrew his claim against the respondent. This contravention, including the other transgressions in regard to the failure by the respondent to respond to correspondence, are merely administrative in nature, and not material to warrant a finding that the respondent is not a fit and proper person to continue to practice. In any event, the applicant has already penalised the respondent for some of these administrative transgressions.

[58] It is undoubtedly so that non-compliance with any of the provisions of the Act and the Rules of the applicant is a serious transgression. It is also of particular importance that an attorney complies with the provisions of the Act and the Rules in relation to the money of a client which is placed in his or her custody and control, as a result, the respondent must still be sanctioned for the transgressions.

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3 See Kaplan v Incorporated Law Society, Transvaal [1981] 4 All SA 15 (T)

[59] In the circumstances of this case, I am of the opinion that an appropriate sanction would be for the respondent to be precluded from practising for his own account, either as a principal or in partnership or in association or as a member of incorporation, for a period of two years. Should, he in future, that is, after the expiry of the period stated herein, choose to practise as stated above in this paragraph, he shall have to satisfy the court that he is a fit and proper person to do so. Such a sanction in my view, will serve to protect the public and to avoid repetition of this conduct.

[60] The evidence indicate that the respondent was, at the time of drafting his answering affidavit to the applicant's supplementary affidavit, in the process of closing down his practice, with a few remaining files being taken over by another firm of attorneys where he is to be employed as a consultant for a short while. I would as such infer that by now he has already closed down his practice. If not, he should be granted a period of six months within which to wind up his office. This process must be done in conjunction with the applicant. Therefore, I would propose that a curator *bonis* be appointed to assist the respondent to wind up his practice. If the respondent has already closed down his practice, a curator *bonis* must still be appointed to see to it that the respondent's trust account has been properly closed and that all the creditors have been accounted to.

COSTS

[61] The applicant has prayed for an order for costs on an attorney and client scale. The general rule in matters of this nature is that the respondent has to pay the costs of the applicant on an attorney and client scale because the applicant is not an ordinary litigant as it performs a public duty. [4] On the facts of the present matter, there is no reason, in my view, to depart from the general rule. The cost order against the respondent must be on an attorney and client scale. Indeed, as stated by the applicant's counsel, the applicant must not be burdened with legal costs when launching applications of this nature.

[62] In the premises I would make the following order:

62.1 The Draft Order marked with an "X" and initialled is made an order of court.

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4 See Law Society of the Northern Provinces v Dube [2012] JOL 29446 (SCA) at para 33.

E.M. KUBUSHI

JUDGE OF THE HIGH COURT

I concur

D.S. MOLEFE

JUDGE OF THE HIGH COURT

APPEARANCE

HEARD ON THE	**: 13 MARCH 2015**
DATE OF JUDGMENT	**: 24 APRIL 2015**
APPLICANT'S COUNSEL	**: MR. J.P. SMITH**
APPLICANT'S ATTORNEY	**: ROOTH&WESSELS INC**
RESPONDANTS' COUNSEL	**: ADV. D. VAN DEN GORGERT**
RESPONDANTS' ATTORNEY	**: JOH G HUNTER ATTORNEYS**