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FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 3039/2014

In the matter between:

LAW SOCIETY OF THE FREE STATE Applicant

and

WERNER LE ROUX First Respondent

BERNARDUS JACOBUS VIVIERS Second Respondent

STELLA SMITH Third Respondent

GOODRICK & FRANKLIN ATTORNEYS INC Fourth Respondent

(Registration Number: 2003/031198/21)

CORAM: MOLEMELA, JP *et* DAFFUE, J

JUDGMENT: DAFFUE, J

HEARD ON: 6 NOVEMBER 2014

DELIVERED ON: 6 FEBRUARY 2015

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[1] This is an application by the Law Society of the Free State Province for the striking off the roll of an attorney, Mr Werner Le Roux ("Le Roux"), alternatively his suspension from practice.

[2] Le Roux is cited as the 1st respondent. His former co-directors of Goodrick & Franklin Attorneys Inc, Mr Bernardus Jacobus Viviers and Ms Stella Smith are cited as 2nd and 3rd

respondents respectively and the company is cited as 4th respondent.

[3] In contrast to the relief claimed against the 1st respondent, the following relief is sought against 2nd and 3rd respondents in the Notice of Motion: "The second and third respondents are warned, alternatively appropriately sentenced (sic), but their names are not removed from the roll of attorneys."

[4] It is not strange that 2nd and 3rd respondents do not oppose the application in view of the stance adopted by the Law Society.

[5] It is the Law Society's case that the 4th respondent's trust account reflected a substantial trust deficit in the total amount of R917 652.27 on 28 February 2011. This is not in contention.

[6] Other grounds relied upon for the bringing of the application are (a) the contravention of rule 16 and 16A of the Law Society's rules, (b) misappropriation of trust funds by the respondents, (c) consistent trust deficits over a period of time, (d) the failure to submit a Rule 16B audit report timeously, (e) qualified audit reports for the years ending 28 February 2011 and 29 February 2012, and (f) the failure to keep proper book of accounts in contravention of section 78 of the Attorneys Act and the Law Society's rule 16. Furthermore it is alleged that 1st respondent in particular failed to co-operate fully with applicant during its investigation and making conflicting statements, that he

practises without a Fidelity Fund Certificate and that he is guilty of unprofessional conduct.

[7] Partners in a firm of attorneys and directors in an incorporated company of attorneys are jointly responsible to keep proper books of accounts in according with the Attorneys Act, 53 of 1979 and Rules of the Law Society. Each director in an incorporated company is jointly and personally liable for the acts and omissions of the company.

[8] Messrs Kotie Kruger Chartered Accountants, the auditors of the 4th respondent, presented an annual audit report on 2 September 2011 in respect of the financial year ending on 28 February 2011. It contained a qualification. The auditors did not audit the books of the 4th respondent for the terms ending at the end of May and August 2010, but the trust deficits were found to be R99 899.98 and R26 310.22 respectively. On 30 November 2010 the 3rd term of the 2011 financial year, the trust deficit increased to R441 846.17 and by the end of that financial year the trust deficit was R917 652.27.

[9] Prior to the launch of this application the company's directors were given the opportunity to respond to a report prepared by Newtons Chartered Accountants on behalf of the Law Society. It transpired from the responses that Le Roux, Smith and the bookkeeper of 4th respondent find themselves in one camp, whilst Viviers finds himself in a different camp. Accusations are rife between Le Roux and Viviers in particular, the one blaming the other for the predicament in which the company and the directors find themselves.

[13] The non-involvement of a director with the financial management of the company is no defence at all. Compliance with the Act and Rules is the duty imposed upon every practising attorney for his account, in partnership or as a director of a corporate company. See: **Hepple** *loc cit* at para [21].

[14] As a general rule striking-off is reserved for attorneys who have acted dishonestly, whilst transgressions not involving dishonesty are usually visited with a lesser penalty of suspension from practice. See: **Summerley v Law Society, Northern Provinces** 2006 (5) SA 613 SCA at para [21].

[15] If an attorney is unable to administer and conduct a trust account, it does not mean that striking-off should follow as a matter of cause. The converse is also correct: it does not follow that striking-off is not an appropriate order. See: **Malan and another v The Law Society, Northern Provinces** 2009(1) SA 216 SCA at paras [10] and [11].

[16] Due to the seriousness of the allegations brought to light, the court may, on the basis of the principles laid down in the **Hepple** case be inclined to impose harsher sanctions than the ones proposed by the Law Society in respect of 2nd and 3rd respondents who have at this stage chosen not to oppose the application. In appreciation of the fact that they may have chosen not to oppose the application due to the relatively lighter sanctions recommended for them by the Law Society, it is only fair that they be afforded an opportunity of filing answering affidavits so as to

comprehensively deal with the evidence relied upon by the Law Society.

[17] Consequently the following orders are issued:

(1) The application is postponed to the opposed roll of Thursday 16 April 2015;

(2) The 2nd and 3rd respondents are allowed to file answering affidavits dealing with the aspects referred to in this judgment, if they so wish, by not later than 13 March 2015;

(3) Applicant shall file a supplementary replying affidavit, if required, by not later than 27 March 2015;

(4) Heads of argument and any supplementary heads of argument that the parties may wish to file shall be filed in accordance with the Practice Directives of this Division;

(5) Costs to stand over for later adjudication.

J.P. DAFFUE, J

I concur.

pp **M. B. MOLEMELA, JP**

On behalf of applicant: Adv. D.M Grewar
Instructed by:

Azar & Havenga Inc
BLOEMFONTEIN

On behalf of 1st respondent:

Adv. H Van Eeden SC
with Adv C de Witt
Instructed by:
Steenkamp, De Villiers & Coetzee
BLOEMFONTEIN