

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

15/2/2013.

CASE NO: 9644/12

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

APPLICANT

AND

DANIEL JOACHIM JACOB VAN DER MERWE

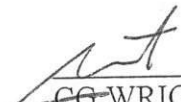
RESPONDENT

JUDGMENT

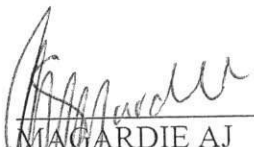
Wright, AJ

1. In this unopposed application the Law Society of the Northern Provinces seeks orders striking the name of the Respondent from the Roll of Attorneys, that he surrenders and delivers to the Registrar of this Court his certificate of enrolment, the appointment of a *curator* to the financial affairs of the Respondent's practice and ancillary relief.
2. The evidence shows a shortage on the Respondent's trust account and that a number of the Respondent's clients have laid complaints in regard thereto. The Respondent has not co-operated with the Law Society or attempted to explain his behaviour or the shortage on his trust account. In one case the Respondent failed to refund an amount of over R500 000 from his trust account. In another case the Respondent has failed to account for the sum of R260 000. In yet another case the Respondent has failed to account for the sum of over R95 000.
3. In **Summerley v Law Society of the Northern Provinces 2006 (5) SA (SCA) 613 at para 2**, Brandt JA held that it had become settled law that the application of Section 22(1)(d) involves a threefold enquiry. The first enquiry is aimed at determining whether the Law Society has established the offending conduct upon which it relies, on a balance of probabilities. The second question is whether, in the light of the misconduct thus established, the attorney concerned is not a "*fit and proper person to continue to practise as an attorney*". The exercise of the discretion at the second stage "*involves, in reality, a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, a value judgment*". The third enquiry again requires the Court to exercise a discretion. At this stage the Court must decide, in the exercise of its discretion, whether the person who has been found not to be a fit and proper person to practise as an attorney deserves the ultimate penalty of being struck from the Roll or whether an order of suspension from practise will suffice.
4. In my view the evidence warrants the striking of the Respondent's name from the Roll of Attorneys and the other relief sought.

5. The order I propose is to grant the relief sought in paragraphs 1-12 of the notice of motion for the Applicant dated 16 January 2012.


CG WRIGHT AJ
B-C

15/2/13


MACARDIE AJ
I agree and it is so ordered / I disagree