

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 2273/2009

In the case between:-

THE LAW SOCIETY OF THE FREE STATE

Applicant

and

MOLISE CECIL CHABANE

Respondent

CORAM:

HANCKE, AJP *et* MOLEMELA, J

HEARD ON:

11 JUNE 2009

JUDGMENT BY:

HANCKE, AJP

DELIVERED:

11 JUNE 2009

[1] This is an application for an order in terms whereof the respondent be struck off the roll of attorneys, alternatively be suspended from practice for such period and on such conditions as this Court may deem fit, together with ancillary relief. The application is unopposed.

[2] In its founding affidavit the President of the applicant, Mr. Hendrik Cornelius van Rooyen, alleges that the respondent is not a fit and proper person to practise as an attorney of this Court for the following reasons:

- “5.1 Respondent unlawfully withdrew several amounts totalling **R58 607.01** from the bank account in the estate of late RJ Nyetanyane. The executrix in this estate, Elsie Ntebaleng Nyetanyane, was at all relevant stages unaware of these withdrawals, neither consented thereto, nor ratified same. The money was withdrawn by respondent for his personal purposes and not paid back. The action of the respondent is considered to be theft.
- 5.2 The total loss to the estate is the amount of **R58 607.01**.
- 5.3 Notwithstanding respondent’s statutory obligation and several directions and requests by applicant, his audit report in accordance with Rule 16 of Applicant’s Rules for the year ending 28 February 2008, which had to be lodged with applicant on or before 31 August 2008, is still outstanding.”

[3] An attorney may be struck from the roll “if he in the discretion of the court, is not a fit and proper person to continue to practise as an attorney”. (Section 22(1)(d) of the Attorneys Act, 53 of 1979.)

[4] The practical manner in which the Courts exercise their disciplinary powers was trite and the enquiry was threefold. The court should first decide whether the alleged offending

conduct had been established. If the answer was yes, a value judgment was required to decide whether the person concerned was not a fit and proper person as envisaged in section 22(1) of the Attorneys Act. And, if the answer was again in the affirmative, the court should decide, in the exercise of its discretion, whether, in all the circumstances of the case, the person in question was to be removed from the roll or merely suspended from practice. **LAW SOCIETY OF THE CAPE OF GOOD HOPE v BUDRICKS** 2003 (2) SA 11 (SCA) at 13 J – 14 B.

- [5] There is no doubt that the attorneys' profession is an honourable profession, which demands a high degree of honesty and integrity from its members. See: **SUMMERLEY v LAW SOCIETY, NORTHERN PROVINCES** 2006 (5) SA 613 (SCA). Dishonesty of a member in general justifies the conclusion that an attorney is not a fit and proper person to continue to practise as such. See **MALAN v LAW SOCIETY, NORTHERN PROVINCES** 2009 (1) SA 216 (SCA) at 221 par. [10].

- [6] Apart from the fact that the respondent is guilty of theft of trust monies, he is also guilty of misconduct and the breach of applicant's Rule 17(24) insofar as he neglected or refused to reply to the letters of applicant's executive officer. Furthermore, he is also guilty of misconduct and unprofessional conduct insofar as he has failed to file the required audit report in terms of Rule 16 and is therefore practising without a Fidelity Fund Certificate being issued to him. See sections 41 and 78(4) of the Act; **CIROTA AND ANOTHER v LAW SOCIETY, TRANSVAAL** 1979 (1) SA 172 (A) at 193 F.
- [7] In view of the foregoing the applicant has shown, on a balance of probabilities, that the respondent is guilty of misappropriation of trust funds which amounts to theft of trust monies and a transgression of the Act and the applicant's Rules which at best for the respondent, should be labelled as unprofessional conduct. I am therefore of the view that the respondent is not a fit and proper person to practise as an attorney.
- [8] Accordingly the respondent is struck off the roll of attorneys and a further order is granted in terms of prayers 2 to 11 of the Notice of Motion.

S.P.B. HANCKE, AJP

I concur.

M.B. MOLEMELA, J

On behalf of applicant:

Adv. J.P. Daffue SC
Instructed by:
Azar & Havenga Inc
BLOEMFONTEIN

On behalf of respondent:

No appearance.

/sp