



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 5205/2023

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

RYAN GILBERT GREEN

Respondent

HEARD ON: 28 MARCH 2024

CORAM: MHLAMBI ADJP *et* CHESIWE, J

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 09 May 2024

[1] On 16 November 2023, the applicant approached this court seeking an order as follows:

- "1. That **RYAN GILBERT GREEN** (hereafter referred to as "**the Respondent**") be suspended from the roll and practice of legal practitioner of the High Court of South Africa until such a time that a valid Fidelity Fund Certificate has been issued to him, alternatively for such period and on such conditions as the Honourable Court may deem fit.
2. That the Respondent shall immediately surrender and deliver his certificate of enrolment as a legal practitioner of this Honourable Court to the Registrar of this Honourable Court;

3. That in the event that the Respondent fails to comply with the terms of the order in the preceding paragraph 2, within 2 (two) days from the date of service of this order on him, the sheriff be authorised and directed to take possession of the certificate, and to hand it over to the Registrar of this Honourable Court;
4. That the Respondent and any other employee of the Respondent be prohibited, with immediate effect, from handling or operating and dealing with any of the trust banking accounts of his practice(s), the banking accounts of any deceased estates in respect of which he has been appointed as executor or Master's representative and any banking accounts of any insolvent estates in respect of which he has been appointed as a liquidator;
5. That the Director of the Free State office of the Applicant, **Margarette Kwakye** and her successor(s) in title be and is appointed as curator bonis ("**the Curator**") of the legal practice of the Respondent and to administer and control the trust accounts of the Respondent, including accounts relating to insolvent and deceased estates and any estate under curatorship connected with Respondent's practice as an attorney including the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of Section 86(1) and (2) of the Legal Practice Act 28 of 2014 ("**the Act**") and/or any separate or interest bearing accounts as contemplated by section 86(3) or section 86(4) of the Act, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the "**trust accounts**").
 - 5.1 Subject to the approval of the Board of Control of the Fidelity Fund ("**the Board**") to sign and endorse cheques and/or withdraw funds and generally to operate upon and the trust account(s), but only to such extent and/or for such purpose as may be necessary to bring to completion current instructions in which the Respondent was acting at the date of this order,
 - 5.2. Subject to the approval of the Board to recover and receive and, if necessary in the interest of persons having lawful claims against the trust account(s) and/or against the Respondent in respect of moneys held, receive and/or invested by the Respondent in terms of sections 86(2) and 86(3) of the Act (hereinafter referred to as "trust monies"), to take legal proceedings which may be necessary in respect of incomplete transactions in which the Respondent may have been involved and which may have been wrongfully and unlawfully paid from the trust account(s) and to receive such monies and to pay same to the creditor(s) of the trust account(s);
 - 5.3. To ascertain from the Respondent's books of account the names of all persons on whose account the Respondent appears to hold or to have received trust monies

(hereinafter referred to as "trust creditors") and to call upon the Respondent to furnish her within 30 (thirty) days from the date of this order, with the names, addresses of the amounts due to all trust creditors,

- 5.4. To call upon such trust creditors to furnish such proof, information and affidavits as she may require to enable her, acting in consultation with and subject to the requirements of the Board, to determine whether any such trust creditor has a claim in respect of moneys in the trust account(s) and if so, the amount of such claim;
- 5.5 To admit or reject, in whole or in part, subject to the approval of the Board, the claims of any such creditors, without prejudice to such trust creditors' right of access to the civil courts;
- 5.6 Having determined the amounts which, she considers are due to trust creditors, to pay such claims in full, but subject always to the approval of the Board;
- 5.7 In the event of there being any surplus in the said trust account(s) after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce as the case may be, firstly, any claim of the Fund in terms of section 86(5)(a) of the Act in respect of any interest therein referred to and secondly, without prejudice to the right of the creditors of the Respondent, the costs, fees, and expenses referred to in this order, or such portion thereof as has not already been separately paid by the Respondent to the Applicant and, if there is any balance left after payment in full of such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Board, to the Respondent, if he is solvent, or if the Respondent is insolvent, to the Trustee of his insolvent estate;
- 5.8 In the event of there being insufficient trust monies in the trust account(s) of the Respondent in accordance with the available documentation and information, to pay the trust creditors on a pro rata basis-
 - 58.1 subject to the approval of the Board to close the trust account(s) and pay the credit balances to the Fund and to require the credit balances to be placed to the credit of a special trust suspense account in the name of the Respondent in the Fund's books;
 - 58.2 to refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the Act;
 - 58.3 to refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the Act, and to authorise the Board to credit the credit balances referred to in sub-paragraph "5.8.1" above to its "Paid Claims

Account" when the Fund has paid, in terms of section 55 of the Act admitted claims of the trust creditors in excess of such credit balances, provided that, notwithstanding the foregoing, the said Board shall be entitled in its discretion, to transfer to its "Paid Claims Account" the amount or amounts of any claim or claims as and when admitted and paid by it;

- 5.9 *Subject to the approval of the Chairperson of the Board to appoint nominees or representatives and/or consult with and/or engage the services of attorneys and/or counsel and/or accountants and/or other persons, where considered necessary, to assist such Curator in the execution of the duties of the Curator; and*
- 5.10 *To render from time to time, as Curator, returns to the Board, showing how the trust account(s) have been dealt with, until such time as the said Board notifies her that she may regard her duties as discharged.*
6. *That the Respondent be and is directed to immediately deliver all records relating to the legal practice of the Respondent, which for the purpose of this order, but without limitations, will include all accompanying records, files, correspondence and documents which are directly or indirectly concerned with, or which contain particulars of information to:*
 - 6.1 *any monies received, held or paid by the Respondent for or on account of any person while practicing as an attorney;*
 - 6.2 *any monies invested by the Respondent in terms of section 86(3) and/or section 86(4) of the Act;*
 - 6.3 *any interest on monies so invested and which was paid over or credited to the Respondent;*
 - 6.4 *any estate of a deceased person administered by the Respondent whether as executor or on behalf of the executor, in terms of the provisions of the Administration of Estate Act, Act 66 of 1965;*
 - 6.5 *any insolvent estate administered by the Respondent as a trustee or on behalf of a trustee in a trust in terms of the Insolvency Act, 24 of 1936*
7. *That should the Respondent fail to comply with the provisions of the preceding paragraph "6" of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the Respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, is empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such Curator.*

8. That Respondent be and is hereby removed from office as —

- 8.1. *Executor of any estate of which Respondent has been appointed in terms of section 14(1) read with section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1) thereof;*
- 8.2. *Curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1 and section 85 of the Administration of Estates Act, No 66 of 1965;*
- 8.4. *Trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;*
- 8.5. *Liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 71 of 2008;*
- 8.6. *Trustee of any trust in terms of section 20(1) of the Trust Property Control Act, 57 of 1988;*
- 8.7. *Liquidator of any close corporation appointed in terms of section 74 of the Close Corporations Act, 69 of 1984;*
- 8.8. *Administrator appointed in terms of section 74 of the Magistrates' Court Act, 32 of 1944.*

9. *The Curator is entitled to:*

- 9.1 *hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;*
- 9.2 *require claimants to provide any documentation or information which the Curator may consider relevant in respect of a claim or possible or anticipated claim, against the Curator and/or Respondent and/or Respondent's clients and/or Fund in respect of money and/or other property entrusted to the Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;*
- 9.3 *publish this order or an abridged version thereof in any newspaper he considers appropriate;*

- 9.4 *close the Respondent's practice insofar as it relates to the client files, records and trust accounts.*
10. *That the Curatorship will terminate when the Curator receives a final written discharge from such duties from the Applicant consequent upon the Curator filling with the Applicant a final report and account, together with supporting vouchers, in respect of the execution of the Curator's duties in terms of this Order.*
11. *That the Applicant is exempted from furnishing security for the performance of their obligations as Curator.*
12. *That the Respondent be and is hereby directed.*
- 12.1 *to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the Respondent;*
- 12.2 *to pay the Curatorship fees and disbursements;*
- 12.2 *to pay the expenses relating to the publication of this order or an abbreviated version thereof;*
- 12.2 *within 1 (One) year of her being requested to do so by the Curator or within such longer period as the Curator may agree to in writing, to satisfy the Curator by means of the submission of taxed bills of cost or otherwise, of the amount of fees and disbursements due to the Respondent in respect of his former practice and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the Curator without prejudice, however, to such rights, if any, as he may have against the Trust Creditors concerned for payment or recovery thereof and;*
13. *That the Respondent is ordered to pay the costs of this application on an attorney and own client scale, including the costs occasioned by the employment of Counsel.*
- [2] On 29 February 2024, the application was postponed at the instance of the respondent when the court granted the following order:
- "2.1 *The application to postpone is granted and the matter is postponed to 28 March 2024, and it is a final postponement.*
- 2.2 *The respondent shall update the applicant on weekly basis on the progress of the audit reports.*
- 2.3 *The audit reports shall be complied with and submitted on or before 20 March 2024.*

2.4 *The respondent shall pay the wasted costs accessioned by the postponement."*

- [3] On 28 March 2024, Mr Lubbe, counsel for the respondent, admitted that the respondent had not complied with the court order and submitted that during the previous hearing, he had requested a longer period within which to comply. He then handed up two letters from the accountants, CS Smit Admin dated 27 March 2024 and one from Kotie Kruger Auditors dated 28 March 2024. The accountants advised that they were the consulting bookkeepers to the firm, Green Attorneys, since July 2023 and confirmed that the books for the financial year ending 28 February 2022 were written up to the date of 28 February 2022, and were currently with the auditors to be filed with the LPC. They had prepared all the data for the financial year ending 28 February 2023 up to 28 February 2024. The processing was complete on the accounting software up to 30 November 2022. The auditors had received the first two quarters of the current year for their review, being the reports of the respective financial periods of May 2022 and August 2022.
- [4] They had also prepared all the data up to April 2023 concerning the financial year ending 28 February 2024.
- [5] The auditors confirmed that the 28 February 2022 audit had been finalised and were awaiting the original "*attorneys statement on trust accounts*" and the "*fidelity fund*" certificates signed by the respondent. Receiving those signed documents, they could submit them to the applicant. They were informed on 22 March 2024 by the accountants that the reprocessing of the accounting data into the AJS Accounting System was in progress and completed up to 31 August 2022 (second quarter).
- [6] Mr Lubbe requested the court to grant an extension of a week or two for the submission of the relevant documents and if the court were not so inclined, the order sought should be granted but suspended for a period of two (2) to four (4) weeks to enable the respondent to comply with the order granted on 29 February 2024. He submitted that the audit report for the year ending February 2022 was finalised and was awaiting the signature which could be furnished on the very

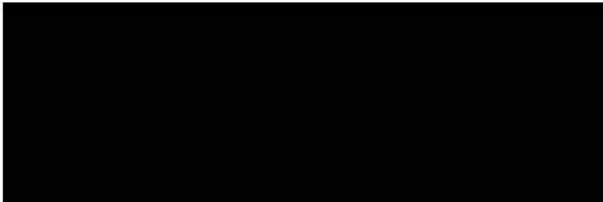
same day. The audit report for the year ending February 2023 was on the verge of completion.

- [7] Mr Motselebane, the applicant's counsel, persisted with the application and submitted that as an attorney in practice, the respondent was required to submit an unqualified audit report for the financial period 01 March 2021 to 28 February 2022. This report had to be submitted before 31 August 2022. Should the respondent submit the said unqualified audit report timeously, he was required to apply for a fidelity fund certificate on/or before the 1 December 2022. If the respondent complied with the requirements and successfully completed the application, the respondent would have been issued with a valid fidelity fund certificate for the year ending December 2023. The respondent failed and/or neglected to submit an audit and apply for a fidelity fund certificate for the year ending December 2023.
- [8] In replication, Mr Lubbe requested that the court grant an order in terms of which the audits should be finalised and handed in by 12 April 2024 which would grant the respondent sufficient time to comply.
- [9] As at the time of the preparation of this judgment, there was no indication whatsoever from the respondent that he had complied with the order of 29 February 2024; and that he updated the applicant every week on the progress of the audit reports or indicated to the court that he had complied with his request that the audit reports were finalised and submitted on 12 April 2024. The respondent continues to disregard the court order granted previously as well as his undertakings. There is therefore no reason whatsoever why the application should not be granted as per the notice of motion.
- [10] I therefore make the following order.

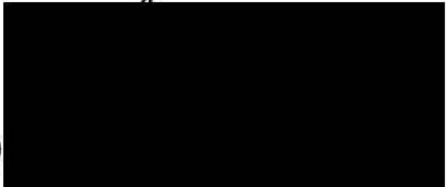
Order:

1. The respondent is suspended from the roll and practice of a legal practitioner of the High Court of South Africa until such a time that a valid Fidelity Fund Certificate has been issued to him.
2. Prayers 2 to 13 of the Notice of Motion are granted.

I concur,



MHLAMBI, J



CHESIWE, J

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