



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 49286/2020

Date: 2024/06/13

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

13/06/2024

DATE

SIGNATURE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

And

KARABO MONTGOMERY MOKOENA

1st Respondent

MOKOENA KARABO INCORPORATED

2nd Respondent

JUDGMENT

BRAND AJ (WITH MBONGWE J CONCURRING)**Introduction**

[1] In this matter an order is sought striking the first respondent from the roll of legal practitioners; or, in the alternative finally suspending him from practicing as attorney.

[2] The applicant is the South African Legal Practice Council ('the LPC'), a body created in terms of the Legal Practice Act 28 of 2014 ('the LPA'), inter alia to 'regulate all legal practitioners and all candidate legal practitioners', 'enhance and maintain the integrity and status of the legal profession', 'determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners', and 'promote and protect the public interest'.¹

[3] The first respondent – Karabo Montgomery Mokoena ('Mokoena') - is a member of the LPC who has been practicing as attorney under its auspices and before that those of its predecessor, the Law Society of South Africa, since 1999. Since 2004 he has practiced as attorney through the second respondent: his practice, Mokoena Incorporated ('Mokoena Inc').

[4] The LPC brings this application in exercise of its disciplinary mandate in terms of sections 36 to 44 of the LPA. It places before this court evidence of a litany of transgression of the LPA and of its own Code of Conduct² and Rules.³ These relate in the first place to several complaints against Mokoena that the LPC received from some

¹ Section 5 of the LPA.

² Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities, published under GenN 168 in GG 42337 of 29 March 2019 (as amended).

³ Rules in terms of Sections 95(1), 95(3) and 109(2) of the Legal Practice Act, published under GenN 401 in GG 41781 of 20 July 2018 (as amended).

of his clients (concerning the dilatory and uncommunicative manner in which he handled their matters) and an advocate he had briefed (concerning non-payment of fees); secondly to the manner in which he managed and administered his practice (for example, practicing without a fidelity fund certificate; failing to submit annual audited financial statements; and failing to keep proper accounting records); and thirdly to his conduct in reaction to the complaints against him and the LPC investigation of his affairs (failing to reply to correspondence; being evasive and dilatory in responding to complaints and allegations of impropriety; failing to cooperate with LPC investigations; and disobeying orders of this court related to his disciplining).

[5] The LPC submits that several of these transgressions on their own, but failing that, certainly all of them taken together, show that Mokoena is not a fit and proper person to practice as attorney, so that he should be struck from the roll.

[6] Mokoena disputes these allegations and opposes the application for him to be struck in two ways: he raises a point *in limine*, namely that the LPC had approached this court prematurely, before it had concluded its own internal disciplinary proceedings against him and has as such both acted *ultra vires* and had deprived him of an opportunity to state his case; and he denies all the allegations against him, that he is unfit and improper, and that he should be struck from the roll.

[7] Accordingly, the application raises four issues for decision:

- 7.1 The point *in limine*: whether the LPC in bringing this matter to court as it has, acted *ultra vires* and in doing so deprived Mokoena of a fair hearing.
- 7.2 Whether Mokoena is guilty of the transgressions the LPC alleges he committed.

7.3 If indeed he is guilty, whether that indicates that he is not fit and proper to practice.

7.4 If indeed he is unfit and improper to practice, whether he should be struck from the roll of legal practitioners.

The point *in limine*

[8] The point *in limine* was raised by Mokoena in his answering affidavit and was also advanced by counsel acting on his behalf during the hearing of this matter. In brief, it amounts to this: The LPC approached this court prematurely, before it had concluded its own disciplinary processes against Mokoena. In doing so, it acted outside the scope of its powers as described in the LPA and so, unlawfully; and procedurally unfairly, in that it deprived Mokoena of the opportunity properly to state his case. For both these reasons, he concludes, the application should be dismissed without reaching its merits.

[9] At the conclusion of submissions concerning the point *in limine* at the hearing of this matter, we dismissed it. Our reasons for doing so, follow below.

[10] This application commenced as an urgent application for interim relief in the form of a temporary suspension from practice pending conclusion of investigations into Mokoena's affairs and the prosecution of an eventual application for his permanent striking from the roll or final suspension from practice. The interim relief was prayed for in Part A of the application; and the application for permanent striking in its Part B (which is now before us). At least at its commencement, this application was brought by the LPC in exercise of its authority to do so in terms of section 43 of the LPA.

[11] Section 43 of the LPA authorises any 'disciplinary body' of the LPC, if it 'is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct' to refer the matter to the LPC for it to decide whether to approach a court with an urgent application for the practitioner concerned to be temporarily suspended or for other interim relief.

[12] Because there is no allegation in this matter that he misappropriated trust money, Mokoena claims that the LPC could only approach this court in terms of section 43 if it was satisfied that he is guilty of 'other serious misconduct'. It could not be so satisfied, he continues, as it had not called him before its disciplinary committee to determine through conducting a full-blown disciplinary hearing, whether indeed he was guilty of serious misconduct. Instead, it had only concluded its investigations into the complaints against him. Accordingly, it was not authorised to approach this court.

[13] This submission doesn't get out of the starting blocks, even at a purely formal level: there is a surfeit of precedent in which just such an argument to prevent a hearing of this nature in this court proceeding has been rejected. Chief among these is the judgment of the Supreme Court of Appeal in *The Law Society of the Northern Provinces v Morobadi*, where it was held that: '[i]n general, it is correct that the Council may proceed with the application for the striking off of the applicant [or] for his or her suspension from practice without pursuing a formal charge before a disciplinary committee if in its opinion, having regard to the nature of the charges, a practitioner is no longer considered to be a fit and proper person.'⁴

⁴ (1151/2017) [2018] ZASCA 185 (11 December 2018) at para [25].

[14] It is of course so that *Morobadi* was decided based on the similar provisions of the erstwhile Attorneys Act,⁵ and not the current legislation, the LPA. Nonetheless, more recently, this conclusion has several times been applied concerning the LPA in this court, in at least the following judgments: *South African Legal Practice Council v Masingi*;⁶ *South African Legal Practice Council v Molati and Another*;⁷ and *Langa v South African Legal Practice Council*.⁸ I am aware of the seemingly contrary precedent from the Free State Division of this court in *Legal Practice Council v Mokhele*⁹ where an approach by the LPC to this court for an order suspending a practitioner from practice before disciplinary proceedings against him in the LPC had been concluded was rebuffed by the court. But that judgment is clearly distinguishable from this matter, in that there the investigative committee of the LPC had not yet concluded its investigation, preceding a possible disciplinary hearing and the suspension order was sought to enable further investigation.¹⁰ In addition the Supreme Court of Appeal remarked about this aspect of the judgment, albeit *obiter*, that '[t]he wording of s 43 may not necessarily support such a conclusion'.¹¹

[15] That these precedents, apart from in any event being binding on me, are correct is evident if one has regard to the substance of the matter. Mokoena's submission fails to take account of the nature and purpose of section 43, read within the disciplinary scheme set out in sections 36 to 44 of the LPA as a whole. Section 43 is clearly intended as an extraordinary provision that allows the LPC, in suitably serious cases, on an urgent basis precisely to by-pass the ordinary disciplinary processes prescribed

⁵ Attorneys Act 53 of 1997 (repealed).

⁶ (2023/077988) [2023] ZAGPPHC 1158 (13 September 2023) at para [15].

⁷ [2023] ZAGPPHC 2207; 2023-038247 (9 June 2023) at paras [7] – [15].

⁸ (79330/2018) [2023] ZAGPPHC 734 (1 September 2023) at para [8].

⁹ (3312/2022) [2022] ZAFSHC 241 (14 September 2022).

¹⁰ *Mokhele* (above) at para [24].

¹¹ *South African Legal Practice Council v Mokhele* (1138/2022) [2023] ZASCA 177 (14 December 2023) at para [5].

by Chapter 4 of the LPA and approach this court for relief before any final decisions concerning the guilt or otherwise of a member have been made – ie, where guilt of serious misconduct appears as yet only *prima facie*. This appears from the following:

- 15.1 The section commences with the phrase '[d]espite the provisions of this Chapter' ('this Chapter' being Chapter 4 of the LPA, which sets out the entire disciplinary process), so explicitly placing itself outside the ordinary proceeding of disciplinary steps against a member.
- 15.2 Section 43 confers such authority as it does not only on the disciplinary committee of the LPC, which is the only body authorised to conduct a disciplinary hearing and take final disciplinary decisions on behalf of the LPA. Instead, it uses the term 'disciplinary body', which includes, according to the definition section of the LPA an investigative committee, that is generally authorised only to investigate and report to the LPC and does not take final decisions concerning discipline of a legal practitioner.
- 15.3 The section does not refer to any actual disciplinary determinations having to be made before it applies. Instead, the trigger for its application is only that the disciplinary body concerned must have *considered* – not heard and decided - a complaint and then be satisfied that a legal practitioner has either misappropriated trust monies or committed other serious misconduct.
- 15.4 For relief, the section refers only to suspension and alternative *interim* relief. This shows that it creates a procedure through which the LPA can obtain relief that is in place while another, more final and determinative process – such as a full-blown disciplinary hearing before the LPC's

disciplinary committee or indeed a hearing before this court concerning the striking off the roll of a legal practitioner - takes its course.

[16] In light of all this, it is clear that Mokoena's submission that the LPC was authorised to approach this court only after its disciplinary committee had conducted a disciplinary hearing and concluded that he was guilty of serious misconduct, has no merit.

[17] Likewise the procedural fairness point. While it is so that the LPC's approach to this court before it had conducted and concluded a disciplinary hearing deprives Mokoena of the opportunity of a disciplinary hearing before the disciplinary committee of the LPC, it is not so that it deprives him of a reasonable opportunity to state his case and be heard and that, as such, it is procedurally unfair.

[18] Instead of being heard before the disciplinary committee of the LPC, he was heard before this court. Here, he could place his case before us by way of affidavit and then present it through written argument and oral submissions at the hearing of this matter, represented as he was, by counsel. The opportunity to state his case in this court offers him at least equal but probably superior to that which he would have before a disciplinary committee of the LPC.¹²

[19] It is on these grounds that the point *in limine* ought to be dismissed.

¹² *Law Society of the Northern Provinces v Soller* (992/2001) [2002] ZAGPPHC 2 (26 November 2002); *The Law Society of the Northern Provinces v Adekeye and Another* (21758/2018) [2018] ZAGPPHC 371 (17 May 2018) at para [27].

The transgressions

[20] This matter has an extended history before this court, which is set out below.

[21] Mokoena was admitted as attorney on 8 June 1999. He established his practice (the second respondent, Mokoena (Karabo) Incorporated ('Mokoena Inc') on 11 October 2004.

[22] From 2016 onwards, the LPC started to receive what turned into a series of complaints against Mokoena from clients and others: on 1 June 2016, a complaint from a client, IG Lekunya ('the Lekunya complaint'); on 1 July 2017, a complaint from client FF Mokhuane ('the Mokhuane complaint') and complaints from clients LJ Rampai, SE Rampai, and ME Rampai ('the Rampai complaints'); on 5 July 2017, a complaint from client G Sibanyoni ('the Sibanyoni complaint'); on 11 January 2018, a complaint from client FY Bochuane ('the Bochuane complaint'); and on 4 March 2021, a complaint from Adv S Mojamabu ('the Mojamabu complaint').

[23] Partly in response to these complaints, the LPC in 2018 appointed an inspector to inspect Mokoena's affairs and that of his practice (the first inspection). The inspector attended at Mokoena's practice for the first time on 24 July 2018.

[24] On 23 June 2020, the LPC's inspector (at first Ms Mpete, later replaced by Mr Swart) completed his report on Mokoena's affairs. On 15 July 2020, the LPC's Investigating Committee considered Mokoena's conduct and the inspector's report and referred the matter to the LPC's Council.

[25] On 28 September 2020, the LPC launched an application in this court urgently to suspend Mokoena from practice pending an investigation against him (Part A of the application) and, once the investigation has been concluded, for him to be struck from the roll of legal practitioners (Part B). It is the part B of this application, launched already in 2020, that is now before us.

[26] On 26 October 2020 this court issued an order that the LPC must inspect Mokoena's records. This inspection commenced on 4 February 2021 and was finalised on 28 June 2021 (the second inspection).

[27] The hearing of Part A of the application was set down for 17 February 2022. On 16 February 2022 Mokoena launched an application for the hearing to be postponed. However, on 17 February this application was dismissed and this court ordered that Mokoena be suspended from practising pending finalisation of Part B of the application, that a curator *bonis* be appointed, and that Mokoena is directed to file his supplementary answering affidavit by 18 March 2022.

[28] The hearing of Part B of the application was then set down for 8 November 2022. However, by this date Mokoena had not yet delivered his supplementary answering affidavit (in answer to Part B of the application) as directed, so that the hearing was postponed to 1 August 2023 and Mokoena ordered to file his supplementary answering affidavit by 9 December 2022.

[29] On 1 August the matter was again postponed, because Mokoena had filed his supplementary answering affidavit late, without applying for condonation and because the LPC had in the interim filed a further supplementary founding affidavit to which Mokoena had to respond. Accordingly, this court ordered that the matter be postponed

and ordered Mokoena to file a condonation application for the late filing of his supplementary answering affidavit by 31 August 2023, and his answer to the second supplementary founding affidavit by 30 September 2023.

[30] The matter was again set down for hearing on 8 February 2024, which is when it came before us.

[31] From this more than two decades of history emerges a litany of complaints that the LPC now levels against Mokoena. There are broadly three categories: the complaints referred to above laid with the LPC by clients and one advocate, concerning Mokoena's dealings with them; complaints concerning his management of his practice and in particular his finances; and complaints that arose from the investigations conducted into his affairs and his failure properly to cooperate with the investigators and the LPC and openly and properly to account for his conduct. I deal with each of these categories of complaints – those concerning which the LPC proceeded at the hearing of this matter – in turn below.

Complaints concerning Mokoena's dealings with clients and others

The Lekhunya complaint

[32] On the LPC's version, on 1 June 2016 the Council received a complaint from a client, IG Lekhunya, that although she instructed Mokoena to act on her behalf in a third-party claim in 2008, she remained unaware of the status of her claim as Mokoena failed to report to her and to answer her telephone calls or respond to her messages. This complaint was referred to Mokoena on 23 June 2016 with a request for a response by 11 July 2016.

[33] Mokoena failed to meet the 11 July deadline for a response. On 18 July 2016 he informed the Council that he was looking into the matter and will revert with his comments on the complaint. He did not do so.

[34] Only on 12 September 2016, after being notified by the Council on 6 September that the complaint had been referred to an investigative committee, did he respond and then only that the matter had been resolved with Lekhunya, that the complaint would be withdrawn, and that the client had been referred for medico-legal examination.

[35] However, on 8 November 2016, Lekhunya indicated to the Council that the matter had not been resolved and that she wished to proceed with the complaint. Mokoena was informed of this, and his comment was requested by 5 December 2016. He never responded.

[36] An inspection of the file in the matter later showed that the referral for medico-legal examination in fact occurred only on 7 September 2018. In March 2021, the second, court ordered inspection of Mokoena's records showed that the matter had, 13 years after instructions were first received, still not be concluded, with the file indicating only that it was awaiting trial.

[37] Mokoena's response to this version of the LPC's consists almost wholly of bare denials. His only substantive response is:

37.1 That Lekhunya was throughout aware of the status of her claim, as she had been informed of a settlement offer received from the RAF which

she rejected; and as she was informed that she would be referred for a medico-legal examination.

37.2 That when Lekhunya informed the Council on 8 November 2016 that the matter had not been settled and that she wishes to proceed with the complaint, she was referring to her claim against the RAF and not to her complaint against Mokoena, so that the complaint had in fact been resolved.

[38] Neither of these responses withstand scrutiny. No evidence in the form of correspondence or references to the file in the matter is offered to substantiate the claim of a settlement offer that was rejected by Lekhunya. No timeline is provided (or proven) to indicate when these alleged instances of contact with Lekhunya occurred. Indeed, from the file it is clear that at least the referral to the medico-legal examination occurred only in 2018 – a full ten years after Mokoena was first instructed in the matter. The file also contradicts Mokoena's assertion that the referral occurred in 2016 (which even if true would in any event have been eight years after he was instructed).

[39] The attempt to explain away Lekhunya informing the Council that the matter has not been settled by saying that she was referring to her claim against the RAF, is contrived. She also indicated that she wished to proceed with the complaint; and almost five years later her claim against the RAF was in her file still pending, with an indication that it was awaiting trial. Both these facts contradict Mokoena's explanation.

[40] In sum it is clear that at best for Mokoena until December 2016 (so for eight years) but probably until 2018 (for 10 years) he did not attend to Lekhunya's matter and communicate with her to the standard that is expected of an attorney. In addition,

13 years after her having instructed Mokoena, Lekhunya's claim against the RAF was still pending. Her complaint must accordingly be upheld.

The Mokhuane complaint

[41] On 1 July 2017 the Council received a complaint against Mokoena from client FF Mokhuane. The complaint entailed that while acting on his behalf in a claim against the RAF, Mokoena failed to advise him of the costs of his action; did not communicate with him concerning his claim; and did not provide him with progress reports on his claim, so that he was unaware of the status of the claim.

[42] On the LPC's version, it provided Mokoena with the complaint on 11 August 2017 and requested that he comment by 4 September 2017. He failed to do so and also to respond to a subsequent letter from the LPC, dated 5 September 2017.

[43] When the LPC's first inspector, Swart, looked at Mokhuane's file, he found that Mokhuane's claim against the RAF was lodged on 14 April 2013. After this initial activity, nothing else is reflected in the file.

[44] With the second inspection, Mokoena informed the inspector that he had written to Mokhuane and informed him that he could not proceed with his claim and terminates his mandate. The reasons for this relate to the medical report and hospital records.

[45] Mokoena's only response to the allegation that he failed properly to communicate with his client is a bald denial, without any evidence to corroborate it. This stands against the evidence from the file in the matter, in which no such communication is noted after the initial lodgement of the claim in 2013.

[46] Mokoena's allegation that in 2018 he terminated his mandate with Mokhuane does not assist him. Instead, it raises more problems. It amounts to an admission that the file had been with him for more or less five years while he did nothing about it. The medical documents on which he bases his decision to withdraw would have been in his possession from the start, in 2013, yet he accepted the instruction to act on the claim and waited five years before terminating the mandate. The file further shows that after accepting instructions in 2013 and lodging the claim with the RAF, he did not issue summons in the matter for five years.

[47] In this light, it is clear that Mokoena both failed to communicate properly with Mokhuane about his claim and failed over a period of five years to attend to it properly or at all. Accordingly, also this complaint must be upheld.

The Rampai complaints

[48] On 1 July 2017, the Council received complaints concerning Mokoena from Mr LJ Rampai, Mr SE Rampai and Mr ME Rampai. The complaints concerned their claims against the RAF for which they instructed Mokoena early in 2013. It entailed that Mokoena failed to inform them of the costs their claims; that he failed to report to them regularly or at all on the progress with their claims; and that he failed to respond to their communication with him.

[49] On the LPC's version the Council referred the Rampai complaints to Mokoena on 11 August 2017 and requested his comment by 4 September 2017. Mokoena failed to reply and to comment on the complaint by 4 September. He also did not reply at all to a second letter concerning these complaints that the council sent him on 5 September 2017.

[50] The LPC alleges that, during the first inspection of Mokoena's affairs, he gave the Rampai files to the inspector. They contained no correspondence with the clients.

[51] During the second inspection, Mokoena alleged to the inspector that he had communicated with the Rampais on 10 October 2018, to let them know that he will no longer be proceeding with their claims. The reasons he offered for this decision relate to the statutory medical reports and hospital records concerning their claims.

[52] Mokoena responds to the LPC's version with a bare denial, without any corroboration, stating only that he had in fact communicated with the Rampais, had responded to their queries, and had told them of the costs associated with their claims.

[53] This bare denial is contradicted by the absence of any correspondence in the files. Also, his assertion that he had on 10 October 2018 let the Rampais know that he would not proceed with his claims raises additional issues. The statutory medical report and hospital records on which he on his version based his decision to withdraw were in his possession from the date he received instructions. It took him more than five years to reach the conclusion that the claims should not proceed. In addition, the file indicates that he managed to issue summonses in the Rampai claims only a full five years after he first took instructions.

[54] Mokoena's bare denials do nothing to prevent the conclusion that indeed, he had not only failed to communicate with the Rampais about their claims but had also failed properly to attend to their affairs, for a period of more than five years. The Rampai complaints must also be upheld.

The Sibanyoni complaint

[55] On 7 July 2017 the Council received a complaint against Mokoena from one IG Sibanyoni, a client who had instructed Mokoena in a claim against the RAF. The gist of the complaint was that Mokoena did not properly and responsibly attend to his matter and also did not report to and communicate with him concerning his matter.

[56] The LPC's version is that it communicated the Sibanyoni complaint to Mokoena on 24 July 2017 and requested a response from him by 10 August 2017. No response was received, despite a further letter from the LPC dated 16 August 2017 and requesting a response by 8 September 2017.

[57] Only on 11 September 2017 did Mokoena respond, and then only to request an extension of time for his response to reach the Council. The Council granted an extension, until 18 September 2017. Mokoena did not respond even by this extended deadline. No later response was received.

[58] Mokoena responds to the LPC's version of this complaint through a bare denial, uncorroborated and without amplification; that is, except for an attempt to blame his client and the LPC for his unresponsiveness to the complaint by stating (again without corroboration) that his client and the LPC withheld information from him that he required to respond to the complaint.

[59] Mokoena did inform the inspector during the Council's first inspection of his affairs that he had closed Sibanyoni's file, because the client could not recall the details of the accident that caused his injuries. This claim was repeated in the answering affidavit. It does not come to his aid. Sibanyoni states in his complaint that he had

when first instructing Mokoena told him that he could not recall any details of his accident, but that Mokoena then assured him that it did not affect the chances of success of his claim. Mokoena was in this light aware of this difficulty right from the outset, yet he waited several years before withdrawing because of it.

[60] The LPC's version is not effectively gainsaid by Mokoena's bare denial and must stand.¹³ His attempted explanation of his closure of the file several years after receiving instructions does no more or less than corroborating the LPC's version of neglect and uncommunicativeness. Also this complaint must be upheld.

The Buchoane complaint

[61] On 19 January 2018 the Council received a complaint concerning Mokoena from a client, GY Buchoane. The complaint relates to a claim against the RAF, concerning damages resulting from an accident that happened in April 2007. It entails that Mokoena failed to inform her properly of the costs of her litigation against the RAF; that she had difficulty communicating with Mokoena and that he failed regularly to communicate with her; that Mokoena had failed to do much if anything concerning her claim in a period of 11 years since it was instituted; and that she was unaware of the status of her claim.

[62] The Council communicated the complaint to Mokoena. He responded in two letters dated 20 March and 17 August 2018, respectively. His response in sum was that he had issued summons in the matter in October 2009; that the client was examined by medical experts in November 2010; that settlement concerning the merits

¹³ The well-known *Plascon Evans* rule does not apply in matters such as these. See *Van den Berg v The General Council of the Bar of South Africa* [2007] ZASCA 16; [2007] 2 All SA 499 (SCA) at para [2].

was achieved in August 2013; that the claim was enrolled for trial on the quantum in October 2015 but was postponed at the RAF's request; and that he had then again applied for a trial date, after a pretrial conference was held on 30 July 2018. When the LPC's second inspection of Mokoena's affairs took place from February to June 2021, a trial date was still being awaited.

[63] Apart from baldly denying the allegations in the complaint in his answering affidavit, Mokoena adds there only that he had requested a trial date on 11 October 2018.

[64] His response, both in the two letters and in his affidavits before this court, does nothing to gainsay the allegations of failure to disclose litigation costs, failure properly to communicate and neglect of the matter. There is no proof, nor even any allegation before this court that he had at the outset or later informed Buchoane what costs the litigation would entail. He simply baldly denies the complaint that he failed properly to communicate with his client. These allegations in the complaint must therefore stand.

[65] Furthermore, the uncontroverted facts before the court – indeed, those few offered by Mokoena himself – show that while summons was issued in October 2009 and settlement achieved on the merits in August 2013, a trial date for determination of the quantum had not yet been set in 2021, eight years after settlement on the merits and more than five years after the first trial date, when the matter was postponed. This establishes that Mokoena indeed, as alleged in the complaint, neglected Buchoane's claim. Accordingly, Buchoane's complaint must be upheld.

The Mojamabu complaint

[66] On 4 March 2021, the LPC received a complaint from a practicing advocate, S. Mojamabu, in essence that Mokoena had failed to pay him fees due for work he had done for him on brief between November 2011 and February 2013, thus contravening Rules 3.4 and 18.18 of the LPC's Code of Conduct.

[67] After failing to secure payment from Mokoena, Mojamabu instituted action against him and obtained an order for payment of R261,156.55. On 10 September 2015, Mokoena paid Mojamabu R95,000.00. Although he undertook to pay the balance owed, he has to date not done so. The major portion of the money due Mojamabu thus remains unpaid, eight years since it became due and despite judgment having been obtained for its payment.

[68] Mokoena does no more to address Mojamabu's complaints than offer bare denials, without any corroboration. This does not rebut the allegations in the LPC's version and Mojamabu's complaint, especially in light of the fact of a money judgment against Mokoena, in favour of Mojamabu. Mojamabu's complaint must in this light be upheld.

Transgressions concerning Mokoena's management of his practice

[69] The LPC alleges that Mokoena committed several transgressions of the LPA and the LPC's Code of Conduct in the manner in which he over time ran his practice. There is a wide range of such complaints: that he practiced without a fidelity fund certificate for various periods; that he failed to keep proper accounting records; that he failed to keep accounting records at his place of business, as required; that he

received a qualified audit; that he operated a second or satellite practice in Bloemfontein that was not registered with the LPC and of which the LPC was unaware; and that he failed to keep proper records of his clients' affairs with him.

[70] At the hearing of this matter and in its heads of argument on file, the LPC made submissions only concerning the instances of practice without a fidelity fund certificate and the failure to keep proper accounting records. I address only the former of these two issues in this judgment.

Fidelity fund certificates

[71] Section 84(1) of the LPA requires that an attorney practicing for own account like Mokoena have a valid fidelity fund certificate. This is a peremptory requirement, and one of great import. Apart from committing a criminal offence punishable by fine or imprisonment,¹⁴ attorneys practicing for own account without a fidelity fund certificate place their trust creditors (chiefly their clients) at risk. Doing so has repeatedly been held by this court to be serious misconduct on the sole basis of which an attorney may be struck from the roll.¹⁵

[72] On the LPC's version Mokoena has over the past several years frequently practiced as attorney without a fidelity fund certificate. The most egregious instance was also the most recent: from 1 January 2021 until his suspension on 17 February 2022, a period of more than a year. But he also did so several times before that, for

¹⁴ See section 93(8)(a) of the LPA.

¹⁵ See for recent examples in this Division, *South African Legal Practice Council v Kokoloane Cyril Pitjeng* (422/2021) [2022] ZAGPPHC 973 (6 December 2022) at para [15]; *South African Legal Practice Council v Langa and Others* [2023] ZAGPPHC 1728; 79330/2018 (31 March 2023) at paras [19] and [25]; *South African Legal Practice Council v Masingi* (2023/077988) [2023] ZAGPPHC 1158 (13 September 2023) at para [48]; and *South African Legal Practice Council v Setati* (570/2022) [2024] ZAGPPHC 207 (13 March 2024) at para [36].

shorter periods: 1 January 2010 to 29 January 2010, 1 January 2011 to 28 February 2011, 1 January 2013 to 21 May 2013, 1 January 2019 to 20 February 2019 and 1 January 2020 to 17 January 2020.

[73] Mokoena's transgression of section 84(1) of the LPA has occurred regularly, over a period of more than ten years. Indeed, it can be said to form a pattern. Each of the periods practicing without a certificate on their own is significant, ranging from 17 days to four months and 21 days, and to the longest period of one year, one month and 17 days. Taken together, he has over the past 13 years practiced without a certificate for almost two years.

[74] Nonetheless, he fails to respond almost at all to these allegations. Concerning all the specific periods detailed above, he offers only a bare denial that he practiced without a certificate, but without anything to corroborate that claim. He does go so far as to claim that for one of the periods (1 January to 20 February 2019), it was the LPC's and not his fault that he did not have a certificate, as the LPC issued the certificate 'belatedly'. He makes this claim again without corroboration, but more importantly, in the process impliedly admits that he during that period practiced even though he did not have a certificate, for whatever reason.

[75] In short, he offers nothing to gainsay the facts placed before this court by the LPC, which show that he repeatedly, over a long time, for significant periods practiced for own account without a fidelity fund certificate. I must conclude that he indeed did so.

Transgressions concerning Mokoena's response to the disciplinary proceedings against him

[76] When presented by the LPC with complaints from clients or facing disciplinary investigation and in particular an application to this court for suspension or striking from the roll, a legal practitioner must not act as though involved in an adversarial process. Instead, because a legal practitioner is in the final instance an officer of this court and bears a duty at all times to assist and be open with this court, he must cooperate fully, openly and with diligence.¹⁶

[77] This means that he must furnish the full facts concerning any allegations against him, whether before the LPC or, particularly, this court. He must avoid bare denials and evasiveness and should act such as to facilitate rather than obstruct the proceedings.¹⁷ Even if this requires disclosure of information adverse to their interest, legal practitioners facing discipline must be fully honest and act in the utmost good faith.¹⁸ Allegations, evidence and complaints must be responded to meaningfully, with the intention to provide a full and proper explanation.¹⁹ In short, when responding to discipline before the LPC and before this Court, a legal practitioner must exhibit exactly those requirements of scrupulous honesty and integrity that is always required of him by virtue of the nature of his profession and his position as an officer of this court.²⁰

[78] In his initial responses to the complaints from clients; his attitude to the two investigations against him; and his participation in the proceedings before this court, Mokoena fell far short of these exacting requirements.

¹⁶ *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853G-H; *Law Society of the Northern Provinces v Mogami & Others* 2010 (1) SA 186 (SCA) at 195-196 par [26].

¹⁷ *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853G-H.

¹⁸ *Hewetson v Law Society of the Free State* 2020 (5) SA 86 (SCA) at para [49].

¹⁹ *Hepple v Law Society of the Northern Provinces* 2014 JDR 1078 at para [9].

²⁰ *Law Society of the Northern Provinces v Sonntag* 2012 (1) SA 372 (SCA) at 380 C-I.

[79] As detailed above, when the LPC received complaints from clients, it referred those complaints to Mokoena and requested his comment on them by a specified date. In all but one of these instances (Buchoane's complaint) Mokoena was unresponsive in that he either replied well after the specified date or not at all. In the process he also gave undertakings to respond at a chosen date, which he then failed to honour (see eg Lekhunya's complaint).

[80] Where he did respond to the LPC, his responses were sometimes evasive, or did not accord with the facts. So, for example, Mokoena responded to Lekhunya's complaint that it had been settled with the client, while Lekhunya herself indicated to the Council that it had not and that she wished to proceed with the complaint. Also concerning Lekhunya, he indicated in his response to the Council that he had referred the matter for medico-legal inspection in 2016, when the file shows that this referral occurred two years later only, in 2018.

[81] Once investigations into his affairs from the Council had ensued, Mokoena's participation in those were also uncooperative, bordering on being evasive and obstructionist. One example suffices. When the first inspection commenced, Ms Mpete visited Mokoena's offices on 24 July 2018. She requested his accounting records, but Mokoena informed her that those records were not at his office as they were with his bookkeeper. She informed him that she would attend at his office again on 8 October 2018 and provided him with a list of documents and records she then wished to inspect. Mokoena gave an undertaking that the required records would then be available. Nonetheless, on 8 October when Mpete came to his office, Mokoena again failed to produce any of the requested documents or records as undertaken. Thereafter, he persisted in his failure to produce the required records and documents.

[82] In addition to the uncooperativeness and evasiveness that this illustrates, it bears mentioning that Mokoena's failure to keep his accounting records at his practice was in breach of Rule 54.9.2 of the LPC's Rules; while his failure to produce his accounting records when requested breaches section 87(5)(a) of the LPA. A breach of section 87(5)(a) of the LPA also constitutes a criminal offence, in terms of section 93(9) of the LPA.

[83] The most egregious instances of uncooperativeness and evasiveness occurred after this court on 26 October 2020 ordered an inspection of his affairs, which commenced on 4 February 2021; and subsequent to that, when this court suspended him from practice and appointed a *curator bonis* on 17 February 2022.

[84] Swart, the inspector who carried out the inspection this court ordered on 26 October 2020 reported that Mokoena failed to provide him with his accounting records or his full client files as ordered by this court. This failure persisted, despite an extension of time granted to him and despite his undertakings to the contrary.

[85] Once the *curator bonis* had been appointed, Mokoena, after first not making himself available at his practice (he was eventually found only after the sheriff of the court traced him) failed to hand over to the *curator bonis* as required by court order, his client files, his accounting records, his auditor's reports and his trust account bank statements.

[86] This conduct not only again illustrates a general attitude of uncooperativeness and evasiveness but is in contravention of the order of this court – an order that Mokoena had been served with and was accordingly well aware of.

[87] There is also a further pattern of non-compliance with this court's orders: Mokoena failed on several occasions to file a supplementary answering affidavit as ordered by this court on 17 February 2022.

[88] Mokoena's failure to cooperate and his evasiveness persisted in his conduct before this court. As detailed above in the consideration of the various client complaints and the allegations of practicing without fidelity fund certificates, his answers on affidavit to the allegations against him almost invariably consist of bare denials, without explanation or corroboration. In those few instances where he does provide an explanation for a denial, those explanations are fanciful and often not in accord with the objective facts.

[89] This evasiveness in Mokoena's answer to the allegations against him before this court must further be placed in the context of what turned out to be his main response to the application: the point *in limine*. Instead of fully and frankly confronting the allegations against him by placing the necessary facts before this court for its consideration, Mokoena raised a point *in limine*. As an officer of this court, he must have known that this preliminary point had no merit. It contradicts a well-known judgment of the Supreme Court of Appeal and has recently several times explicitly been rejected by this court. Mokoena's resort to this point *in limine* is a further illustration of an obstructionist and evasive approach to the case against him.

Fit and proper

[90] Do these various transgressions found above show that Mokoena is no longer a fit and proper person to be an attorney? Deciding this question entails comparing his offending conduct with the kind and standard of conduct expected of a legal

practitioner.

[91] To be fit and proper to serve as such, legal practitioners must exhibit in their conduct the skill and knowledge required to perform all aspects of their professional duty. This skill and knowledge must at all times be applied with diligence, care, wisdom, and independence. Legal practice further constitutes a profession and not a job. This means that legal practitioners work not in their own interest but serve in the public interest. They do so by employing their skill and knowledge to protect and advance the interests of their clients and not their own, but always as officers of this court. That is, they pursue the interests of their clients in such ways that serve this court and the law, and through that, the public interest. Finally, the 'capstone' virtue that ties all this together, is integrity. Above all, legal practitioners must perform their duties honestly, with the highest good faith, and must be trustworthy and dependable.

[92] Mokoena's conduct outlined above shows that he falls far short on all these counts. The manner in which he dealt with his clients' affairs and managed and ran his practice, illustrates a lack of the requisite skill and knowledge.

[93] The egregious, repeated, and prolonged neglect of several of his clients' affairs and his failure properly to communicate with them show an absence of the requisite diligence and care in the performance of his duties.

[94] He consistently shows greater concern for his own interests than for those of his clients and for the public interest. This is exhibited, again, in his neglect of his clients' affairs that emerges from the complaints against him, all of which I have upheld. But it appears most starkly in his repeated and prolonged practicing without a Fidelity Fund certificate. In doing this, he clearly and repeatedly placed his clients and

the general public at serious risk and shows a conscious disregard for their interests, in favour of his own.

[95] Moreover, Mokoena's conduct shows him to be unaware or in disregard of his duties as an officer of this court and of the law. He failed in his response to this application for first his suspension and thereafter his striking from the roll to be open with this court, to own up to his manifest failures, to provide the full facts at his disposal and to explain his misconduct meaningfully or at all, as an officer of this court is required to do. Instead, he adopted an adversarial attitude to the application, as an ordinary litigant would do. His response is also characterised by bare denials, without corroboration or explanation. Much of his conduct (practicing without a Fidelity Fund certificate; failing to keep his accounting records at his practice; failing to provide documents and records to the LPC when requested) amounts to criminal offences – sanctionable breaches of the very law he is supposed to serve as officer of this court. Most worryingly on this score, he repeatedly and wilfully failed to comply with orders of this court: the order to hand over specified documents and records, subsequent to his suspension and the order to file a supplementary answering affidavit.

[96] Each one of the characteristics exhibited by Mokoena outlined above would on their own already mark him as not fit and proper. But the most serious concern that arises from his conduct is that it calls into question his integrity. His response to the complaints against him, the LPC's investigations into his affairs and the application before this court is not frank, open, and honest, but evasive and obstructionist. Much of it is also contrived. He repeatedly gives undertakings – to his clients, to Adv Mojamabu, to the LPCs inspectors, to the LPC itself, and to this court – that he fails to honour. In short, he 'ducks and dives.' This conduct shows him to be untrustworthy and not dependable.

[97] For these reasons, I conclude that Mokoena is clearly not fit and proper to be an attorney and officer of this court.

The order

[98] In *Malan & another v Law Society of the Northern Provinces*²¹ the Supreme Court of Appeal held that the sanction to impose upon a legal practitioner who is no longer fit and proper to practice 'is ... a matter for the discretion of the court'. The court's choice of sanction, it continued 'depends upon such factors as the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public.' It concluded that '[u]ltimately it is question of degree'.

[99] Measured against this, Mokoena's conduct can attract nothing other than the striking from the roll that the LPC seeks. As a matter of degree, all his misconduct is serious: the extent of neglect of his client's affairs; the manner of mismanagement of his practice; the simple fact but also the frequency and duration of his practicing without a Fidelity Fund certificate; the extent and nature of his evasiveness and obstructionism; the fact that he not once, but several times performed conduct that amounts to criminal offences; and his repeated failure to comply with orders of this court.

²¹ *Malan & another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at para [6].

[100] As concluded above, these various failures also clearly mark him as lacking the character that would make him worthy of being a legal practitioner: he has been proven to be untrustworthy and not dependable.

[101] A further order of suspension instead of an order striking him from the roll would serve no purpose. He has been under investigation since 2016 and on suspension since 2021. Not once during this entire process did he accept responsibility for his actions and attempt to address his failures. Instead, his approach has been adversarial – he remains in denial. The opportunity to make amends and to rehabilitate himself has passed. Any possibility of him again being allowed to practice in future, absent a proper application for readmission, would place the public at clear risk.

[102] Accordingly, I conclude that the Mokoena should indeed be struck from the roll of legal practitioners, and order as follows:

102.1 That the first respondent, **KARABO MONTGOMERY MOKOENA**, be struck from the roll of attorneys (legal practitioners) of this Court.

102.2 That the first respondent immediately surrenders and delivers to the Registrar of this Court his certificate of enrolment as an attorney of this Court.

102.3 That in the event of the first respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and hand it to the Registrar of this Court.

102.4 That paragraphs 4 to 13 of the order of 17 February 2022 shall remain in force.

102.5 That the first respondent is to pay the costs of this application on the attorney and client scale.



JFD Brand
Acting Judge of the High Court
Gauteng Division, Pretoria



M Mbongwe
Judge of the High Court
Gauteng Division, Pretoria

APPEARANCES

Counsel for the applicant:	Mr R Stocker
Instructed by:	Rooth & Wessels Inc.
Counsel for the respondents:	Mr RE Maesela
Instructed by:	Maesela Inc
Date of the Hearing:	8 February 2024
Date of Judgment:	13 June 2024