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

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

Case No. 2012/2024

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL **APPLICANT**

and

KABELO MATEE **RESPONDENT**

CORAM: DANISO, J *et* MAJOSI, AJ

HEARD ON: 02 MAY 2024

JUDGMENT BY: MAJOSI, AJ

DELIVERED ON: 06 JUNE 2024

I INTRODUCTION

[1] The applicant launched an urgent application in terms of section 43 of the Legal Practice Act 28 of 2014 ("the Act") to suspend the respondent, an attorney

practicing under the name and style Matee Attorney from the roll of practicing legal practitioners of the High Court pending the outcome of a disciplinary hearing alternatively, for such a period the court deems fit with the usual orders which would accompany an order for suspension.

[2] The application was opposed by the respondent.

[3] On 12 April 2024 the application served before Daffue J, a rule nisi returnable on 2 May 2024 was issued[1] on the following terms:

> *"3.1. The Respondent be suspended from the roll of practising legal practitioners of the High Court of South Africa pending the outcome of a disciplinary hearing to be conducted by the Disciplinary Committee of the Legal Practice Council LPC ("the DC") and/or the Criminal Investigations under Cas number 14/01/2024*
>
> *3.2. The Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court, his certificate of admission as a legal practitioner of this Honourable Court.*
>
> *3.3. In the event of the Respondent failing to comply with paragraph 2 supra, within two (2) weeks from the date of service of this order on him, the sheriff is authorized and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.*
>
> *3.4. The Respondent or any of his employees be prohibited, with immediate effect, from handling or operating on any accounts detailed in paragraph 7 infra.*

[1] Court order by Daffue J, dated 12 April 2024.

3.5. *The Director and/or the Acting Director, or a Nominee of the Free State Provincial Council of the Applicant be appointed as the Curator Bonis of the Respondent, to administer and control the trust accounts of the Respondent, and any accounts relating to insolvent and deceased estates and any deceased estate and any estate under Curatorship connected with Respondent's practice as attorney and including also, the separate banking accounts opened and kept by Respondent at a bank in the Republic of South Africa in terms of Section 86(1) of the Legal Practice Act (LPA) and/or any separate savings or interest-bearing accounts as contemplated by Section 86(3) and/or Section 86(4) of the LPA, 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"), with the following powers and duties:*

[a] *immediately to take possession of the Respondent's accounting records, records, files and documents in relation to her practice as a legal practitioner and to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the Respondent was acting at the date of this order;*

[b] *where monies have been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive, and if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the Respondent in respect of monies held, received and/or invested by the Respondent in terms of Section 86(1) and/or Section 86(3) and/or Section 86(4) of the LPA*

(hereinafter referred to as "trust monies"), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the Respondent was and may still have been concerned and to receive such monies and to pay same to the credit of the trust account(s);

[c] *to ascertain from the Respondent's accounting records 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 him/her, within 30 (thirty) days of the date of service of this order or such further period as he/she may agree to in writing, with the names and addresses of and the amounts due to all trust creditors;*

[d] *to call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require as to enable him/her to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondent, and if so, the amount of such claim;*

[e] *except where a trust deficit is determined, to admit or reject, in whole or in part, subject to the approval of the (LPFF) Board, the claims of any such trust creditor, without prejudice to such trust creditor's right of access to the civil courts;*

[f] *having determined the amounts which, he/she considers are lawfully due to trust creditors, to pay such claims in full, but subject to the approval of the LPFF Board;*

[g] in the event of there being any surplus in the trust account(s) of the Respondent after payment of the admitted claims of all trust creditors in full to utilize such surplus to settle or reduce (as the case may be), firstly, any interest due to the Legal Practitioners' Fidelity Fund in terms of Section 86(5) of the LPA, secondly, any curatorship fees and disbursements and costs and expenses payable by the Respondent in terms of this Order, and thirdly, to pay such balance to the Respondent, or duly authorized representative/trustee/executor subject to the terms contained in this Order;

[h] in the event of there being a trust deficit in the trust banking account(s) of the Respondent, in accordance with the available documentation and information, to pay the available balance in the trust banking account(s) of the Respondent to the LPFF;

[i] to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him/her in carrying out his/her duties as Curator; and

[j] to render from time to time, as Curator, returns to the Applicant, showing how the said account(s) has/have been dealt with.

3.6. The Respondent immediately delivers his said accounting records, records, files and documents containing particulars and information relating to:

[a] any monies received, held or paid by the Respondent for or on account of any person;

[b] any monies invested by the Respondent in terms of Section 86(3) and/or Section 86(4) of the LPA, including any interest on monies so invested;

[c] any interest on monies so invested which was paid over or credited to the Respondents;

[d] any estate of a deceased person or an estate under Curatorship administered by the Respondent, whether as executor or Curator or on behalf of the executor or Curator in terms of the Administration of Estates Act, Act 66 of 1965;

[e] any insolvent estate administered by the Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, Act 24 of 1936;

[f] any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act, Act 57 of 1988;

[g] any company liquidated in terms of the Companies Act, Act 71 of 2008, administered by the Respondent as or on behalf of the liquidator;

[h] any close corporation liquidated in terms of the Close Corporations Act, Act 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

[i] the Respondent's practice as an attorney of this Honourable Court, to the Curator appointed in terms of this order, provided that, as far as such accounting records, records, files and documents are concerned, the Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such Curator or his/her nominee.

3.7. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order, the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such Curator.

3.8. The Respondent be and is hereby removed from office as –

[a] executor of any estate of which the Respondent has been appointed in terms of Section 54(1)(a)(v) of the Administration of Estates Act, Act 66 of 1965 or the estate of any other person referred to in Section 72(1) thereof;

[b] curator or guardian of any minor or other person's property in terms of Section 72(1) read with Section 54(1)(a)(v) and Section 85 of the Administration of Estates Act, Act 66 of 1965;

[c] trustee of any insolvent estate in terms of Section 59 of the Insolvency Act, Act 24 of 1936;

[d] liquidator of any company in terms of Section 379(2) read with 379(e) of the Companies Act, Act 71 of 2008;

[e] trustee of any trust in terms of Section 20(1) of the Trust Property Control Act, Act 57 of 1988;

[f] liquidator of any close corporation appointed in terms of Section 74 of the Close Corporations Act, Act 69 of 1984; and

[g] administrator appointed in terms of Section 74 of the Magistrates' Court Act, Act 32 of 1944.

3.9. The Curator shall be entitled to:

[a] 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;

[b] 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;

[c] publish this order or an abridged version thereof in any newspaper he/she considers appropriate; and

[d] close the Respondent's practice insofar as it relates to the client files, records and trust accounts.

3.10. *The Respondent shall within 6 (six) months after having been requested to do so by the Curator, or within such longer period as the Curator may agree to in writing, satisfy the Curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him 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 creditor(s) concerned for payment or recovery thereof.*

3.11. *A bill of costs drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court (who is authorized to do so) mutatis mutandis as if the Curator and the responsible officials of the Applicant in discharging their duties as contemplated in this order had acted as attorneys, shall constitute proof of their reasonable fees and disbursements ("the Curatorship fees and disbursements") and that the Registrar be authorized to issue a writ of execution for payment thereof by the Respondent.*

3.12. *The Curatorship will terminate when the Curator receives a final written discharge from such duties from the Applicant consequent upon the Curator filing 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.*

3.13. *In the event of the Respondent failing to comply with any of the provisions referred to in this Order, the Applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South*

Africa, Act 106 of 1996, for the appropriate relief against the Respondent including but not limited to an Order for the committal of the Respondent to prison for the Respondent's contempt of the provisions of the abovementioned paragraphs.

3.14. The Respondent be and is hereby directed:

[a] to pay, in terms of Section 87(2) / 37(2)(a) of the LPA, the reasonable costs of the inspection/investigation of the accounting records of the Respondent;

[b] to pay the Curatorship fees and disbursements levied in accordance with the provisions of paragraph 13.11 supra;

[c] to pay the expenses relating to the publication of this order or an abbreviated version thereof;

[d] to pay the costs of this application on an attorney -and - client scale."

[4] At the time applicant launched these proceedings, the respondent's Fidelity Fund Certificate had been withdrawn since March 2024. Upon his request, the respondent was granted leave to file a counter application for the review and setting aside of the applicant's decision to withdraw the Fidelity Fund Certificate by 25 April 2024.

[5] In these proceedings, the applicant seeks an order to confirm *the rule nisi* whilst the respondent seeks the discharge of the said order. The applicant raised a point in limine objecting to the authority of the respondent's counsel to appear on behalf of the respondent. It was the applicant's case that pursuant to the granting of the *rule nisi* the respondent is suspended from practicing as an attorney and his Fidelity Fund certificate had already been withdrawn therefore,

his status is similar to that of an ordinary client and Counsel is precluded from representing a client without a brief of an attorney.

[6] The applicant's objection was dismissed on the basis that these proceedings entail the determination of an interim order which has an interim not a final effect. Counsel was at all material times hereto acting on the brief received from the respondent for that reason, the applicant's point in limine was accordingly found to be without merit.

II BACKGROUND

[7] The background facts of this matter are common cause. On 10 of January 2024 the complainant Ms. Ramohauoa, in her capacity as executrix of the late estate of her mother lodged a complaint with the applicant against the respondent pertaining to the winding up of the deceased estate which included the administration of funds received in credit to the estate bank account held at First National Bank (FNB).[2]

[8] The complaint was premised on the respondent's failure to account for work done and money which was withdrawn from the said account. A criminal case of theft was also opened at Bayswater Police Station under *Cas* number 14/01/2024. After an investigation by the Free State Investigating Committee of the applicant, and obtaining an affidavit from the respondent, it resolved on the 20 of March 2024 that the respondent had committed acts of serious misconduct by misappropriating funds of a client held in trust amounting to R 615 300.00 and that an urgent application should be sought in terms of section 43 of the Act to suspend the practioner with the usual orders, pending a disciplinary hearing. It was also resolved that his fidelity fund certificates for the past three years must be withdrawn.

[2] Page 47, applicant's founding affidavit.

[9] The respondent repaid an amount of R 550 000.00 into the late estate's bank account on the 10 of February 2024 and further amounts. Despite these payments, the trust account remained in deficit.

[10] In the founding affidavit, applicant alleged that the respondent thus failed to account to the executrix of the late estate account as about the status of the estate and had no authorization from her for usage of the said funds.

[11] In his answering affidavit, the respondent contends that there are factual misrepresentations made by the applicant in the founding affidavit and they amount to deliberate non-disclosure of information material to this case and that there was no need to approach this court on an urgent basis and that same is tantamount to abuse of court process as the complaint itself is an isolated case[3] and this is confirmed by his bank statements which form part of the application.[4]

[12] The respondent states that the alleged offending transactions referred to by the applicant due to a bona fide error on his part as all his banking accounts, inclusive of his personal and multiple businesses, are with FNB and he believed he was specifically transacting out of another business account not related to his practice, namely, Agodiriwe.[5]

[13] It was the respondent's case that this acknowledgment was also coupled with his willingness to subject himself to any disciplinary process and the assertion that there are insufficient grounds for the granting of the application especially since a firm may report in writing to council the reason for debit and submit proof of rectification as per rules of conduct for legal practitioners.[6]

[14] The respondent also denied that there was any act of misappropriation of funds, the said funds were paid over to the complainant's new attorneys of record in the month of February 2024 save for an amount of R 15 771.32 which was

[3] Paragraphs 5 - 8.
[4] Ibid, paragraph 9 - 10.
[5] Ibid, paragraph 11.
[6] Ibid paragraph 23.1 -23.5.

retained for services rendered and a detailed fees and disbursements account was sent to the attorneys on 6 March 2024.

[15] According to the respondent, the applicant's silence on the date/s on which the disciplinary hearing is to be convened will negatively affect his practice and staff component.[7]

III DISCUSSION

[16] Section 43 of the Act provides:

> *"Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief."*

[17] The said section allows the LPC, as a statutory disciplinary body, to institute urgent legal proceedings in the High Court to suspend a legal practitioner if it is satisfied that a legal practitioner has misappropriated trust fund money or is guilty of serious misconduct. This in itself presupposes the notion that the LPC should put sufficient allegations before court to show that misappropriation has taken place.

[18] The practical application of section 43 has presented a challenge as courts have adopted a dim view of such proceedings being launched on an urgent basis with the investigation against the legal practioner being incomplete or it being launched before disciplinary proceedings have been concluded and an appropriate sanction is imposed and some courts have opted to discharge the

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[7] Ibid paragraph 27.

rule nisi on that basis. Other courts however, have made it clear that once legal practitioners pilfer trust fund money, they must be suspended from the roll.

[19] In Limpopo Provincial Council of the *South African Legal Practice Council v Chueu Incorporated Attorneys and Others*,[8] the SCA faced the very same dilemma. In the court a quo, the LPC brought an application in terms of section 43 to suspend the respondents which were directors of the first respondent for a period of 18 months pending the disciplinary enquiry into the alleged misconduct of the respondents which relating to in the misappropriation of funds received in trust from the Road Accident Fund and a trust deficit of R 25 825 699.89. Interim relief was granted in respect of the second respondent only and he was suspended for a period of 12 months pending the finalization of the investigation *in lieu* of the disciplinary hearing and the application for the suspension of the remainder of the respondents' (directors of the first respondent) was dismissed. Aggrieved by the latter order, the applicant approached the supreme court with special leave to appeal after it was refused by the court a quo that the third to ninth respondents as directors of the firm also be suspended as they cannot escape liability by pleading ignorance of financial matters when faced with an allegation of misappropriation.[9]

[20] It came as no surprise that the SCA upheld the appeal and set aside the order of the high court and ordered the suspension of the third to eight respondents for a period of six months pending the finalization of investigations into their conduct as directors of first respondent (the law firm) failing which, the suspension order will lapse. The court indicated that the order pertains to interim relief that was sought and emphasized that only when final relief is sought, would the question if the legal practitioners are fit and proper persons to continue practice and remain on the roll of legal practitioners.[10]

[21] In my view, the LPC was well within their rights to approach this court in terms of section 43 *in casu* as it regulates the conduct of legal practitioners and

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[8] (459/22) [2023] ZASCA 112 (26 July 2023).

[9] Ibid, paragraph 26.

[10] Ibid paragraph 29; *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA); [2000] 2 All SA 310 (SCA) para 10.

section 84(6) of the LPA empowers them to interdict a practioner who fails to comply with the provisions of the Act or acts unlawfully and unethically. The bank statements annexed to the founding affidavit illustrated that all the banking transactions of the late estate account were in favour of the respondent starting from August 2022 and took place over 14 months. This is a clear pattern of misappropriation of trust fund monies which can only be seen as serious misconduct by a legal practitioner as required by section 43.

[22] The determination of applications of this nature involve a three-stage enquiry as confirmed recently in *Hewetson v Law Society of the Free State*[11] as set out in *Malan and Another v Law Society, Northern Provinces*[12] at para 4:

> *"First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry. Second, it must consider whether the person concerned "in the discretion of the Court" is not a fit and proper person to continue to practise. This involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. And third, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice."*

[23] Section 84 of the LPA requires that a legal practitioner who has been deemed fit to practice for his or her own account, in a partnership, or as a director of a practice which is a juristic entity must be in possession of a valid Fidelity Fund Certificate at all times. No legal practitioner employed or supervised may receive or hold funds in trust without the said certificate and this includes any transfers of legal practitioners from one practice, to another and for the Council to be given notice. In addition to this, section 84(6) states that the Council may withdraw the certificate and where necessary, obtain an interdict against a legal practitioner if he or she fails to comply with the provisions of the LPA or acts unlawfully and unethically. As earlier alluded to herein in above, there is no counter application before court challenging the decision to withdraw the respondent's fidelity fund certificate.

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[11] 2020 (5) SA 86 (SCA).
[12] 2009 (1) SA 216 (SCA).

[24] Both parties have, in their heads of argument, provided an expansive list of authorities and cases related to suspension of legal practitioners by the LPC and it is unnecessary to repeat it in this judgment The applicant contends that the respondent has failed to show cause why the interim order granted should not be made final and he has, on his own version, admitted that the said funds were transferred from the Late estate account to his business account without the knowledge of the executrix.

[25] The applicant also maintained that the respondent committed acts of serious misconduct and there is a well-grounded apprehension exists of irreparable harm to the public if final relief is not granted and a significant risk of reputational risk for the legal profession.[13] They also alleged that the respondent cannot be considered a fit and proper person in these circumstances and that his conduct warrants suspension. On the issue of the respondent's fidelity fund certificates, it was submitted that certificates for the years of 2022, 2023 and 2024 have been withdrawn and he thus, cannot continue to practice as a legal practitioner.[14]

[26] The respondent asserted that the so-called misconduct emanated from a single complaint and it cannot be said to be misappropriation as it would have been unintelligent for him to do so as the Master of the High Court would have detected such transfers upon scrutiny of the late estate's bank accounts and preparation of the liquidation and distribution account. It was emphasized that the money was returned except for an amount of R 15 771.32 which was retained for services rendered.[15]

[27] In these circumstances, it was argued that the applicant failed to make out a case for the relief claimed with its bald allegation that other members of the public will be adversely affect should the order not be granted and another sanction may be imposed by the applicant instead of pursuing an order for his

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[13] Applicant's heads of argument, paragraph 2 – 3.
[14] Ibid paragraph 20.
[15] Respondent's Heads of Argument paragraph 11 -19.

suspension[16] and the urgency was self-created as this information was already available in late March 2024.

[28] Interim relief was already granted on the 12th April 2024 and this order cannot be faulted as already alluded to in paragraph 19 and 20 herein above. In my view, the applicant has already crossed the rubicon of urgency on the strength of the papers and it cannot be averred to be a live issue in light of the filing of an answering affidavit, replying affidavit and heads of argument. Pilfering of the late estate account is not only unethical, but also unlawful hence the complaint succeeded in opening a case of theft. In order to obtain the final relief sought, the applicant must show that it has a clear right, an injury was actually committed or reasonably apprehended and lastly, there is no alternative remedy available as enunciated by the constitutional court in *Masstores (PTY) Ltd v P n Pay Retailers (PTY) Ltd.* [17]

[29] The applicant in its application, attached bank statements of the late estate's Bank account. These statements provided irrefutable evidence that funds were transferred out of the account, by the respondent himself, via 69 internet transfers that took place over a period of 14 months. It also evident from the complaint, that the complainant was not appraised of the progress of the winding up of the estate and nor was her consent obtained for any of the 69 internet transfers that the respondent made in his favour.

[30] Upon most of the funds being "reimbursed" into the account, her further response to the LPC after viewing the respondent response to her complaint, she confirmed that all transactions were fraudulent as not a single creditor was paid.[18] This is a good indication that an injury has occurred which has already resulted in a financial loss and the possibility exists that other members of the public may suffer the same fate.

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[16] Ibid, paragraphs 23 -29.
[17] 2017 (1) SA 613 (CC).
[18] Indexed bundle, Annexure H (Complainant's response) paragraph 2.3.

[31] The respondent does not dispute any of the 69 transactions or that he was the one responsible. He merely states that they happened by accident due to numerous accounts of his being held at FNB in his favour. This argument may have succeeded if it was only one transaction and he himself informed the LPC of his misstep as this type of conduct is discouraged by their code of conduct as legal practitioners, must account for all monies held in trust. In my view, his admission to this undisputed fact is fatal to his case and illustrates clear disregard of section 86 of the LPA which specifically dictates how trust monies must be handled by legal practitioner.

[32] It has been suggested by the respondent that there are alternative remedies available to the applicant of which could have been deployed instead of bringing an application to suspend him from the roll of legal practitioners. Though it never became clear from the papers what this would entail, it was argued that the applicant may take control of its books and trust account and the suspension was unnecessary.

[33] This argument cannot be accepted for several reasons. Firstly, the first internet transfer in his favour took place in August 2022 and from thereon, funds were consistently transferred over a period of time and would have only ceased in September 2023.Not one of the 69 transactions were ever in favour of the late estate or went towards payment of expenses related to the winding up of the estate. None of these transactions were disclosed to the LPC as *bona fide* mistakes or transactions until the respondent was confronted with the formal complainant.

[34] Secondly, the transfer of the funds was not authorized by the complainant as she was not privy to the account transactions until she terminated the services of the respondent and instructed another firm of attorneys. She only later discovered that the funds in the estate account had been syphoned off and even opened a criminal case against the respondent. This is yet another forum wherein the respondent, would be required to account for his unethical conduct.

[35] Thirdly, numerous transactions not only show that the respondent failed to keep proper accounting records of the estate trust account, which is a requirement of the Act, but, has demonstrated that he also has no restraint or discipline where trust moneys are concerned which can only be seen as a misconduct and not a mistake. The said money was only reimbursed once a formal complaint with the applicant had been laid and he was called upon by the LPC to account for the missing funds which had been laid bare by the bank statements.

[36] Lastly, the respondent's his fidelity fund certificate has been withdrawn as provided in section 86(4) of the Act. The practical effect thereof is that the respondent cannot practice as a legal practioner nor is he able to receive or pay over funds without a valid certificate. This is in defiance of section 84 of the LPA which is unacceptable.

IV CONCLUSION

[37] In light of the abovementioned reasons, there is no alternative remedy available to the applicant. The applicant, in my view has thus shown by virtue of being the regulatory body of the respondent that it has a clear right and there is a reasonable apprehension that members of the public may suffer the same fate. I am also satisfied that there is no alternative remedy available to the applicant.

[38] The foundation of the legal profession is honesty and integrity. The conduct of the respondent falls short of this required standard and can only be described as untrustworthy. In my view, the misappropriation of trust money falls into the ambit of misconduct by a legal practitioner. In the prevailing circumstances highlighted herein above, his suspension is warranted as he cannot be considered as a fit and proper person to continue practicing with such serious allegations of malfeasance.

[39] The applicant's Investigation Committee has already investigated the complaint, obtained relevant bank statements and the respondent's written

response to the allegations. There is thus no reason to delay the convening of the disciplinary hearing.

[40] It is also important to point out that the applicant is not required to convene a disciplinary enquiry prior to taking steps for the suspension of the respondent.[19]

[41] For all these reasons above, the rule nisi ought to be confirmed. It is trite that in bringing these applications the LPC is performing a public duty therefore, costs in applications of this nature are borne by a respondent.[20] There are no submissions to the contrary to deviate from this established rule.

V ORDER

[42] Accordingly, it is ordered that:

1. The *rule nisi* granted on 12 April 2024 is confirmed.

2. The respondent shall pay the costs of this application on an attorney and client scale.

[redacted]

O R MAJOSI, AJ

I concur

The Honourable Justice

[redacted]

2024 -06- 06

N S DANISO, J

N.S. Daniso

APPEARANCES:

On behalf of the Applicant	Mr. C. C Boucher
Instructed by:	Jacobs Boucher Attorneys
	BLOEMFONTEIN

[19] *The Law Society of the Northern Provinces v Bothma and Another* (33739/2016) [2019] ZAGPPHC 383 (5 September 2019) at paragraph [8].

[20] *Law Society of the Northern Provinces v Dube* [2012] ZASCA 137; [2012] 4 All SA 251 (SCA) para 33.

On behalf of the Respondent	Adv. M.P Modise
Instructed by:	Matee Attorneys
	BLOEMFONTEIN