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: **4309/2024**

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

CHRISTIAAN GEORGE FREDERICK MAREE 1st Respondent

LUKAS CORNELIS CRONJE 2nd Respondent

MAREE CRONJE INCORPORATED 3rd Respondent

(Previously **KRUGER VENTER MAREE INCORPORATED**)

(Registration number 2022/884277/21)

Coram:	JP DAFFUE et S CHESIWE JJ
Heard:	10 OCTOBER 2024
Order granted:	31 OCTOBER 2024

REASONS HANDED DOWN ON 6 NOVEMBER 2024

The following order was granted and handed down on 31 October 2024:

1. The rule *nisi* of 16 August 2024 is confirmed, subject to the amendment of paragraph 4 of the order which should read as follows:

'4. CHRISTIAAN GEORGE FREDERICK MAREE, the first respondent, is suspended from the roll and from the practice of legal practitioners of the High Court of South Africa pending the outcome of the disciplinary hearing against him and the finalisation of investigations into his conduct as director of the third respondent which hearing and investigations shall be concluded on/or before 30 May 2025, failing which the suspension shall lapse.'

2. The first, second and third respondents shall, jointly and severally, the one to pay the others to be absolved, pay the costs of the main application on an attorney and client scale.

3. The counter-application is dismissed with costs and all three respondents (the applicants in the counter-application) shall, jointly and severally, the one to pay the others to be absolved, pay such costs on an attorney and client scale.

4. The reasons for the order shall be sent to the parties electronically in due course.

REASONS

DAFFUE J (CHESIWE J concurring)

Introduction

[1] The South African Legal Practice Council (the LPC) brought an urgent application in terms of s 43 of the Legal Practice Act 28 of 2014 (the Act) to suspend the first respondent, an attorney practising under the name and style of Maree Cronje Inc (the legal practice cited as third respondent), from the roll of practising legal practitioners of the High Court pending the outcome of a disciplinary hearing, alternatively for such period and on such conditions as the court may deem fit. Simultaneously, the LPC sought an order in terms whereof the aforesaid legal practice be placed under curatorship, a *curator bonis* be appointed and for the customary relief usually granted in these instances. The LPC did not seek any order against the second respondent and no order was granted against him. It is common cause that he became a director of the legal practice recently.

[2] A rule *nisi* was granted on 16 August 2024 with return date 5 September 2024. In terms thereof the court ruled that paragraphs 3 to 17 of the notice of motion should operate as *interim* orders with immediate effect. The costs of the application stood over for later adjudication. On the return date the rule *nisi* was extended at the request of the respondents and the application postponed to 10 October 2024. The respondents were granted an opportunity to file any papers they deemed fit.

[3] On 26 September 2024 the respondents filed a so-called notice of counter-application together with their answering affidavit to which the LPC responded on 4 October 2024. The respondents failed to file any replying affidavits in their counter-application.

[4] At the heart of the dispute between the parties is the first and second respondents' right to practise under the name and style of the aforesaid legal practice without being issued with the requisite Fidelity Fund Certificates (FFC's). More about this later.

The parties

[5] As mentioned, the LPC is the applicant in the application and the respondent in the counter-application. Adv MS Mazibuko represented the applicant in the proceedings before us on instructions of Amade and Company Incorporated.

[6] Mr Christiaan George Frederick Maree, a LPC member who has been admitted as attorney more than 30 years ago, is cited as the first respondent. Mr Lukas Cornelius Cronje, an admitted attorney and member of the LPC, is cited as the second respondent. He became Mr Maree's co-director in the third respondent in July 2024.

[7] The legal practice, to wit Maree Cronje Inc, is a personal liability company and firm of attorneys with registered address in Welkom. It is cited as the third respondent. It was previously known as Kruger Venter Maree Inc, but the name was changed on 5 July 2024. All three respondents were represented before us by Mr CMD Kruger, an attorney of Kruger Venter Inc. The heads of argument have been drafted by Adv S Grobler SC.

[8] In order to avoid confusion and without any disrespect, I shall hereinafter refer to the parties as Maree, Cronje or MCI when referring to the individual respondents, whilst the applicant will be referred to as the LPC.

The relief sought and granted in the main application

[9] I do not intend to quote the rule *nisi* issued on 16 August 2024 as it contains the detailed and usual orders granted in suspension or striking off applications.

[10] It is sufficient to state the following:

a. Maree was suspended from the roll and practice of legal practitioners pending the outcome of the disciplinary hearing against him;

b. contrary to what could have been expected, the court did not delete the remainder of paragraph 4, being the alternative prayer, to wit 'for such period and on such conditions as the Honourable Court may deem fit'. This aspect shall be considered again herein later;

c. Maree was further ordered to immediately surrender and deliver his certificate of admission as legal practitioner to the registrar; it was also ordered that Maree would not be entitled to any fee, reward or reimbursement in respect of legal services rendered during his period of suspension or during any period whilst not being in possession of a FFC;

d. Ms M Kwayke was appointed as *curator bonis* to administer and control the trust account of Maree and MCI, subject to all the orders contained in paragraphs 8 to 15 of the court order;

e. Maree was ordered to pay the costs mentioned in paragraph 16 and he was also removed from all official positions in accordance with paragraph 17 of the order;

f. the prayers contained in the order operated as *interim* orders with immediate effect;

g. the costs of the application stood over for later adjudication.

The history of the litigation

[11] I have briefly mentioned the history of the litigation in the introductory paragraphs. It is apposite to add that on 15 August 2024, the date on which the main application was set down for hearing, Maree filed an affidavit in support of an application for a two weeks' postponement. He indicated already then that he was 'more than willing to accede to certain portions of the relief sought by the Applicant on

an interim basis pending the provision of the said audit reports …'.[1] He also mentioned that MCI had 'a co-director [Cronje] who qualifies to conduct its business pending disciplinary proceedings against me, or at least until its audit reports are finalized.'[2] Apparently the proceedings were adjourned until the next day, to wit 16 August 2024. Messrs Mazibuko and Kruger appeared for the parties respectively. After hearing them, the court dismissed the application for postponement and issued the aforesaid rule *nisi* returnable on 5 September 2024. The respondents failed to file any answering affidavits. On the return date of 5 September 2024 the rule *nisi* was extended to 10 October 2024 in order to allow the respondents a further opportunity to file the papers they deem fit. On that day Adv Hendriks appeared on behalf of the respondents.

[12] I have referred to the 'notice of counter-application' which was accompanied by an answering affidavit to the main application. Cronje is the deponent of this affidavit, although Maree filed a confirmatory affidavit. The LPC filed a notice to oppose the counter-application and filed what they called a replying affidavit dealing with the main application as well as the relief sought in the counter-application. The respondents failed to file a replying affidavit in the counter-application. During oral argument Mr Kruger specifically forfeited the right to apply for a postponement and to file such an affidavit. I must say that it was quite disturbing to receive a so-called supplementary affidavit by one Andrea Nel after the roll was already closed and heads of argument had to be filed already. The respondents failed to apply for consent to file this affidavit as well as the confirmatory affidavit of one Heiriss, an accountant. Although we were entitled to ignore these documents, it may be mentioned that Nel tried to persuade us that there was no trust deficit as found in the auditor's report. Let it be said that there is no reason why the information contained in the two affidavits should be considered for purposes of the adjudication of the present dispute between the parties.

[13] The respondents sought the following orders in their counter-application:

'1. That this counter application be enrolled as one that is urgent and dispensing with the ordinary rules as to notice, form and service to allow the matter to be heard urgently in terms of Uniform Rule 6(12) of the Rules of Court.

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[1] Record: p 344 par 9.4 of his affidavit.
[2] Record: p 344 para 9.6 of his affidavit.

2. That the Respondent in reconvention's decision to refuse to register the Third Applicant in reconvention as a trust account practice, taken on 4 September 2024 be reviewed, set aside and substituted with the following:

"The Respondent in reconvention is directed to register the Third Applicant in reconvention as trust account practice".

3. That the Respondent in reconvention Register the First- and Second- Applicants in reconvention as practising legal practitioners under the Third Applicant in reconvention to enable them to apply for the issuing of Fidelity Fund Certificates in the prescribed manner.

4. That upon receipt of a valid Fidelity Fund Certificate, the Second Respondent (sic) in reconvention be directed to administer and control the trust account of the Third Applicant in reconvention in terms of Section 90(2) of the Act 28 of 2014.

5. That the Respondent in reconvention be ordered to pay the costs of the Counter application on the scale as between attorney and own client.'

The material common cause facts

[14] Several facts are common cause, to wit:

a. Maree is prepared to remain suspended pending finalisation of the disciplinary hearing to be instituted against him by the LPC. The consequence of this concession is that it is really unnecessary to deal during the evaluation of the evidence and the submissions in any detail with the main application, save for the timeline that should be addressed. This concession was also made in paragraph 1.2 of the respondents' heads of argument drafted by their counsel, Adv S Grobler SC;

b. Mr Grobler also conceded in his heads of argument that the placement of MCI under curatorship should remain 'at least until an FFC has been issued to the Second Respondent [Cronje]';

c. neither Maree, nor Cronje is in possession of a FFC and as conceded by Mr Grobler, MCI is *de facto* not registered and therefore, trust monies kept by it shall be administered as provided for in the court order;

d. the name of the legal practice, Kruger Venter Maree Inc, was changed on 5 July 2024 to Maree Cronje Inc (MCI);

e. Maree was initially and till the end of June 2024 the only director of the legal practice, but on 12 July 2024 Cronje joined him as co-director;

f. Maree opened his legal practice under the name and style of Kruger Venter Maree Inc on 1 March 2023 without informing the LPC hereof and also without complying with the requisites of the Act;

g. some nine months later he reported this to the LPC at which stage he was still not in possession of an FFC, he having been issued for the last time with a FFC in November 2016 for the 2017 year;

h. notwithstanding the non-compliance by Maree or Kruger Venter Maree Inc, Cronje decided to join MCI (previously known as Kruger Venter Maree Inc);

i. Maree's legal practice received considerable trust funds since opening of the practice on 1 March 2023 and on 8 January 2024 it held trust funds in excess of R8 million;

j. Maree already appeared before the LPC's investigation committee – Cronje attended him and is well aware of the investigation - and no doubt the matter will be escalated to its disciplinary committee, bearing in mind the alleged and even admitted transgressions;

k. Maree has been practising without a FFC since March 2023 in contravention of s 84 of the Act and this contravention of the Act makes him liable for criminal prosecution in terms of s 93(8);

l. it is apparent that fees have been debited for professional legal work done since the opening of Maree's legal practice on 1 March 2023 which neither he, nor the legal practice was entitled to do, bearing in mind the provisions of the Act;

m. an audit report was obtained which expressed a qualified audit opinion, *inter alia* that the respondents were not FICA compliant and that the balances of trust creditors exceeded the funds held in the trust bank account;

n. there were trust debits or trust shortfalls on at least two occasions, to wit on 31 May 2023 and 29 February 2024 in the amounts of R26 435.05 and R53 355.14 respectively;

o. Mr Cronje has a clear option: if he wants to practise as an attorney for his own account, he may register an entirely new legal practice unrelated to the misconduct under consideration and apply for a FFC, but he is apparently not interested to do so;

p. the LPC took a decision on 2 September 2024, stating that MCI as a trust account practice was under curatorship[3] and 'resolved that in order to be issued with a Fidelity Fund Certificate (FCC) your client [Cronje] must comply with the registration of his law firm by submitting the following documents on the proposed letterhead of the firm: ...' It continued:

'Please further note that your client:

- cannot be issued with a FFC for the entity currently under curatorship

[3] Counter-application: annexure RA5 p 198-199.

- Nor can he operate with the trust account with account number ABSA 4107407941 [the MCI trust account]

However, when your client submits his registration documents as set out above, the Council will consider his application to issue an FFC.'

Evaluation of the evidence and the submissions

[15] Before embarking on an evaluation of the evidence, it is apposite to refer to s 43 of the Act and relevant authority. The section reads as follows:

'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.'

Obviously, the LPC will not be entitled to relief in terms of s 43 if it as the guardian of morals of the legal profession does not place sufficient evidence before the court to show that the misappropriation of trust monies has taken place, or that the practitioner is guilty of other serious misconduct.

[16] I have taken note of the judgment of the Supreme Court of Appeal in *South African Legal Practice Council v Mokhele (Mokhele).*[4] The court failed to provide guidance on the interpretation of s 43 as requested by the LPC insofar as there are some differences of opinion in the various High Courts pertaining to the applicability of the section. *Mokhele* was delivered on 14 December 2023 and therefore five months after *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (Chueu).*[5] The failure of the court in *Mokhele* to come to a decision on s 43 is neither here, nor there. In *Chueu* the same court made it clear that what was required from the LPC in s 43 proceedings is that 'sufficient facts have been shown to justify an *interim* suspension.'[6]

[17] An issue that should have been considered upfront was the wording of paragraph 4 of the order of 16 August 2024. Clearly, the court followed the wording of the notice of motion and did not consider the alternative contained in the paragraph. As the order read, uncertainty was created. In any event, the LPC should not be

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[4] (1138/2022) [2023] ZASCA 177 (14 December 2023).
[5] (459/22) [2023] ZASCA 112 (26 July 2023).
[6] *Ibid* para 29.

allowed to take years, or unnecessary time, to finalise the disciplinary hearing and/or investigations which may eventually be to the detriment of the first respondent who has been admitted as an attorney more than 30 years ago. Save for the present transgressions dealt with in the application, there is no averment that Maree has committed transgressions in the past. If it was the case, I would have expected the LPC to inform the court accordingly.

[18] The LPC has been informed about the irregularities several months ago and had an opportunity to conduct a proper investigation. In any event, a period of two and a half months has passed since the granting of the order on 16 August 2024 and the appointment of the *curator bonis*. I accepted that we were nearing the festive season and several activities would be scaled down. Having considered that, there was no reason why the LPC should not be required to finalise the first respondent's disciplinary hearing and its investigations on/or before 30 May 2025. They should not be heard to say that no time constraints should be placed on them. Time is really of the essence, bearing in mind the interests of the public, but also that of Maree and to a minor extent, that of Cronje and their company.

[19] It must be emphasised that the enquiry at this stage of the proceedings was not whether Maree was fit and proper to practise. This will be considered only when final relief might be sought eventually. All that was necessary at this stage was whether sufficient facts had been shown to justify confirmation of the rule *nisi*. Our task was alleviated insofar as Maree did not oppose his suspension in the *interim*.

[20] It is apposite to refer to the following sections of the Act applicable in these instances. Section 84(1), (2) and (3) stipulates as follows:

'(1) Every attorney or any advocate referred to in section 34 (2) *(b)*, other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or state advocate and who practises or is deemed to practise-

(a) for his or her own account either alone or in partnership; or

(b) as a director of a practice which is a juristic entity,

must be in possession of a Fidelity Fund certificate.

(2) No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.'

Section 93(8) is apposite *in casu.* It reads as follows:

'(8) Any person who contravenes section 84 (1) or (2) or section 34, in rendering legal services-

(a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment;

(b) is on conviction liable to be struck off the Roll; and

(c) is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.'

[21] Maree collected over R8 million from clients by January 2024 which monies were deposited into the trust account of the legal practice which practice failed to keep proper accounting records *ex facie* the admitted audit report, but it was not necessary to dwell too much into this. More importantly, s 93(8) clearly stipulates that any person who contravenes s 84(1) or s 84(2) in rendering legal services commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment. Upon conviction the practitioner is also liable to be struck off the roll of legal practitioners. It is also important to appreciate that such practitioner is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.

[22] LPC rules 54.29 and 54.30 were also considered. Rule 54.29 provides:

'In order to qualify for the issue of a Fidelity Fund certificate, a trust account practitioner must ensure that an unqualified audit or inspector's report is issued in respect of any firm or firms of which he or she is or was a partner or director or sole practitioner during the financial period under review, and is delivered timeously to the Society.'

Rule 54.30 reads as follows:

'Where the audit or inspector's report in respect of the trust account of the firm is qualified by the auditor or inspector, as the case may be, the firm shall provide the Council with such information as the Council may require to satisfy itself that the firm's trust account is in good order, that the trust account practitioner remains fit and proper to continue to practise and that Fidelity Fund certificates may be issued to the members of the firm.'

The objective facts were clear. Neither Maree, nor Cronje could be heard to say that MCI had provided the LPC with an unqualified audit. However, even in the case of a qualified audit, a trust account practitioner may be able to satisfy the LPC that the firm/company's trust account is in good order. MCI is under curatorship and the investigations should be allowed to continue. Neither of these two practitioners may claim at this stage that FFC's may be issued to them as members of MCI. It is not for this court to prescribe or suggest what the LPC may do if Cronje establishes a new firm and then apply for an FFC.

[23] I was not prepared to close my eyes for the illegalities committed, but my particular concern was the interests of the public who entrusted monies to MCI or any of the other respondents in the belief that they were properly safeguarded. Section 55 of the Act deals with the liability of the Legal Practitioners' Fidelity Fund. It reads as follows:

'(1) The Fund is liable to reimburse persons who suffer pecuniary loss, not exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, as a result of theft of any money or other property given in trust to a trust account practice in the course of the practice of the attorney or an advocate referred to in section 34 (2) *(b)* as such, if the theft is committed-

(a) by an attorney in that practice or advocate, or any person employed by that practice or supervised by that attorney or advocate;

(b) by an attorney or person acting as executor or administrator in the estate of a deceased person; or

(c) by an attorney or person employed by that attorney who is a trustee in an insolvent estate or in any other similar capacity,

excluding a curator to a financial institution in terms of the Banks Act, 1990 (Act 94 of 1990) or a liquidator of a mutual bank in terms of the Mutual Banks Act, 1993 (Act 124 of 1993).'

[24] 'Trust account practice' is defined in s 1 of the Act as follows:

'**"trust account practice"** means a practice conducted by-

(a) one or more attorneys who are; or

(b) an advocate referred to in section 34 (2) *(b)* who is, in terms of this Act, required to hold a Fidelity Fund certificate.'

[25] The legislature was fully aware of risks involved in depositing monies into a legal practitioner's trust account. Section 55 is an attempt by the legislature, as was

the case with its predecessor, s 26 of the Attorneys Act 53 of 1979, to protect the persons or entities on whose behalf monies are entrusted.[7]

[26] In *Law Society of the Northern Provinces v Morobadi*[8] the Supreme Court of appeal severely criticised the failure by the High Court to consider the interests of the public notwithstanding the particular legal practitioner's admitted misconduct. It *inter alia* held that the respondent should be suspended from practice as an *interim* measure pending a disciplinary enquiry concerning his professional conduct which enquiry had to be instituted and finalised within three months from the date of the judgment.[9]

[27] The legal practitioners for the parties made interesting, but irrelevant, submissions in their heads of argument in respect of the nature of the LPC's decision of 2 September 2024 communicated on 4 September 2024.[10] Mr Mazibuko submitted that this decision did 'not reflect a positive decision … regarding the registration of the Third Respondent [MCI].' According to him the respondents' 'complaint should be centred around the Applicant's failure to take a decision.' This prompted Mr Grobler to submit that on the LPC's version it acted unlawfully and that it was guilty of unfair administrative action. He submitted furthermore that if the LPC did not decide upon the application for registration of MCI, this amounted to a failure to take a decision which was in any event reviewable.[11] Mr Mazibuko countered the argument in submitting that the respondents brought the LPC to court in the counter-application based on its alleged decision to refuse to register MCI and not for failing to take a decision. It was not necessary to enter into this debate which might be of academic value only. Firstly, there was no proof that MCI applied to be registered *ex facie* the application papers and that the decision of 2 September 2024 was in response to such application. Secondly, the LPC was concerned with Cronje's alleged entitlement to an FFC in order to practise under the name of MCI and thus be allowed to administer and control the trust account of MCI whilst it was under curatorship. The relief claimed in the counter-application could not be granted for the reasons advanced herein.

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[7] *Legal Practitioners' Fidelity Fund v Guilherme* (702/2022) [2023] ZASCA 96 (13 June 2023); 2023 (5) (SA) 409 (SCA).

[8] (1151/2017) [2018] ZASCA 185 (11 December 2018) paras 36&38.

[9] *Ibid* para 43.

[10] Counter-application: annexure RA5 pp 198 & 199.

[11] Reliance was placed on s 6(2)(g) of the Promotion of Administrative Justice Act 3 of 2000, read with s 6(3).

[28] As was the case in *Chueu* and pointed out in paragraph 33 of that judgment, the LPC with its far-reaching powers in taking control of MCI's trust account and all accounting records should have done most of its investigative work by now. It has already taken over all the files and should have investigated most of them by now. The matter cannot be allowed to carry on indefinitely. Therefore, an amendment of the rule *nisi* in respect of paragraph 4 was called for as suggested herein. It is expected that experienced and properly trained personnel had been appointed by the *curator bonis* to ensure that the curatorship is terminated sooner than later.

[29] The following should be born in mind. It is no defence at all for an attorney to explain trust deficits or any other irregularities on the grounds that they had no involvement in the financial affairs of the firm or company as clearly enunciated in *Hepple v Law Society of the Northern Provinces (Hepple).*[12] A legal practitioner should not be heard to say that they have abdicated their responsibilities in favour of their co-directors or co-partners. More recently, the Supreme Court of Appeal put the record straight in *Chueu*[13] in the following words, also relying on *Hepple*:

'Every director has a fiduciary duty towards the company of which it is a director. To plead ignorance of financial matters, when faced with allegations of misappropriation, does not absolve a director. It has been emphasised over the years that legal practitioners cannot escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account. ...' (footnotes omitted)

[30] Having referred to the liability of all partners or directors in a legal practice, Cronje, and to a lesser extent Maree, should be warned to heed the following two *dicta* of the Supreme Court of Appeal that have been cited with approval several times. In *Hepple*[14] the court pointed out that these kinds of proceedings are *sui generis* and are of a disciplinary nature. The duty resting on an attorney is the following:

'It follows therefore that where allegations and evidence are presented against an attorney they cannot be met with mere denials by the attorney concerned. If allegations are made by the law society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside; the attorneys are expected to respond meaningfully to

[12] [2014] ZASCA 75 [2014] 3 All SA 408 SCA para 21; see also *Law Society of the Northern Provinces v Viljoen* 2011 (2) SA 327 (SCA) para 10 where the court confirmed that any legal practitioner who practises on his own account or in partnership (or in a company) without a FFC is committing professional misconduct.

[13] *Chueu loc cit* para 26.

[14] *Hepple* loc *cit* para 9.

them and to furnish a proper explanation of the financial discrepancies as their failure to do so may count against them.'

[31] It was my firm view that the LPC ought to be kept to its task to act speedily as confirmed in *Chueu*. I quote:[15]

'Interim applications for the suspension of a legal practitioner pending an investigation are generally undesirable if the suspension sought is for a lengthy period. Such applications should be launched only where there is no other means of safeguarding the public from the alleged malfeasance of a legal practitioner. An interim order for suspension has a very grave impact on the professional life of a legal practitioner, who would nonetheless be severely prejudiced if exonerated at the end of an investigation by the LPC.'

[32] I would have failed in my duty if I did not mention the respondents' attitude. They attacked the LPC and its officials in numerous letters serving before the court as well as in the answering affidavit. Mr Kruger on their behalf even submitted during oral argument that the LPC 'had hijacked' the legal practice in having it placed under curatorship. In acting as they did, the respondent failed to heed the warnings of the Supreme Court of Appeal. In *Malan and Another v Law Society of the Northern Provinces (Malan)*[16] Harms ADP remarked as follows:

'... Furthermore, instead of dealing with the merits of the allegations, the appellants conducted a paper war and they attacked the Society and its officers, they attacked the Fidelity Fund and they attacked the attorneys who had to take over their files – in short, their approach on the papers was obstructionist.

[28] These factors are 'aggravating' and not extenuating because they manifest character defects, a lack of integrity, a lack of judgment and a lack of insight. ...'

[33] Harms ADP went further and observed in *Law Society of the Northern Provinces v Mogami*[17] that it had become a common occurrence for persons accused of wrongdoing to accuse the accuser and seek to break down the institution involved instead of properly confronting their allegations. He emphasised that courts should not countenance such a strategy.

[34] No doubt, the respondents embarked upon a paper war as is apparent from the application papers by writing the one detailed letter after the other, whilst there was no

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[15] *Ibid* para 32.
[16] [2008] ZASCA 90; 2009 (1) SA 216 (SCA); [2009] 1 All SA 133 (SCA) paras 27-28.
[17] 2010 (1) SA 186 (SCA) at para 26.

substance in their allegations. They are wrong and they should know that. The Act prohibits them from practising without FFCs and furthermore, in doing so they may be convicted of crimes. The interests of the community at large and their clients in particular are to be considered. Members of the public entrusting their monies to an attorney practising without a FFC are not safeguarded in the event of misappropriation of those monies. They will not be refunded by the Legal Practitioners' Fidelity Fund in the case of theft and/or misappropriation of the monies so entrusted.

[35] Cronje was of the view that he ought to be allowed to practise as a legal practitioner of MCI, which is under curatorship, to enable him to apply for the issuing of a FFC. Therefore, so he submitted, on receipt of a FFC he would be entitled to administer and control the trust account of MCI, apparently not understanding that it is still under curatorship. He believes that s 90(2) of the Act provides the mechanism for him to act accordingly. He is totally misguided. Section 90(2) reads as follows:

'Where the legal practitioner contemplated in subsection (1) is an attorney and was practising in partnership or as a member of a company with another attorney or attorneys, the court must allow the trust account to remain under the control of the remaining partners or members, unless there is good reason not to do so.'

Clearly, s 90(1) is applicable. Maree has been suspended from practice temporarily and a *curator bonis* has been appointed to control and administer MCI's trust account. This is clearly not a case where, for example, the one partner of a firm, or director of a company, misappropriated money and is then immediately caught out by the other partners or directors who then put the evidence before the LPC to enable them to either apply for the striking off or suspension of the guilty partner/director. In such an instance, the remaining partners/directors may be allowed to continue with the management of the trust account in appropriate circumstance.

[36] Cronje's affidavit in support of the counter-application is devoid of the correct facts. The correspondence clearly indicated that Maree never informed the LPC in January 2024 of MCI's existence as alleged. The name change occurred in July 2024 only. It is also not correct that Maree paid fees to the LPC to support the registration of MCI as stated. Clearly, Maree paid his own arrear membership fees due and payable as legal practitioner which had nothing to do with MCI. Furthermore, Cronje accompanied Maree to the meeting with the Investigation Committee of the LPC on

27 June 2024. He was well aware of the investigations, but decided to become a director in July 2024 when the name change of the legal practice was effected.

[37] Cronje was of the opinion that he might obtain a FFC by operating MCI. This he made clear during his conversations with officials of the LPC.[18] One Christelle of the LPC made it clear, as indicated in the transcription placed before us,[19] that MCI could not be registered if the director (Maree) was suspended, but that it would be a different scenario if the legal practice had already been registered and one of its directors was suspended which may allow the remaining director to continue (probably referring to the provisions of s 90(2) of the Act). Cronje conceded that the LPC conveyed a decision to him on 4 September 2024 (on his version without reasons) to the effect that 'I can only obtain an FFC, if I establish a new legal entity, the reason now being that MCI is under curatorship.' The LPC's letter of 4 September 2024 is clear and unambiguous. I quoted it above.[20] Surely, Cronje cannot be allowed to take over the management of MCI and the control of its trust account when investigations are being conducted whilst the practice is under curatorship.

[38] On 6 August 2024 Cronje went so far to inform the LPC as follows:[21]

'It also only came to my attention today that there is an application to suspend my partner, Mr Maree, for alleged misconduct. It is then a matter of utmost importance that I, myself, obtain a Fidelity Fund Certificate so that I can continue to operate the firm while my partner deals with the above-mentioned application.'

[39] Cronje at all costs wants to get his hands on the trust account of MCI which is under curatorship and does not want to understand that he is not legally entitled thereto, at least until termination of the curatorship as provided for in paragraph 15 of the court order. It is apparent that the LPC provided reasons in their letter and this was again emphasised in the replying affidavit.[22]

[40] Mr Cronje's *bona fides* should be questioned as clearly indicated by the LPC. On his version there is 'absolutely no allegation of misconduct in the form of misappropriation of trust funds, professional negligence or the like against the

[18] Counter-application: p 20, para 29 read with annexures LC28 & LC29.
[19] Counter-application: annexure WC 27 to the answering affidavit, p 106.
[20] Counter-application: p 198, annexure RA5.
[21] Counter-application: p 200, annexure RA6.
[22] Counter-application: p 170, paras 26-35.

respondents.' This is false. The qualified audit report is damming.[23] It is confirmed that the legal practice was not registered in terms of the Financial Intelligence Centre Act 38 of 2001 (it was not FICA compliant), that it did not maintain the necessary accounting records as required by the Act and its rules, *inter alia*, also insofar as trust accounts have not been updated and balanced monthly. Several transactions could not be supported by adequate supporting documentation and as mentioned earlier, trust deficits were found on 31 May 2023 and 29 February 2024. Furthermore, fees were charged and debited whilst Maree as sole director was not in possession of a FFC.

[41] The LPC acted appropriately. Its decision is not open to any attack whatsoever. No case whatsoever has been made out in the counter-application for review in terms of the Promotion of Administrative Justice Act 3 of 2000, or on any other basis. There is just no justifiable reason why Cronje should be allowed to control and manage MCI's trust account while it is under curatorship, and more importantly, to rely on MCI's existence to obtain a FFC. The counter-application is indeed stillborn and should be dismissed with costs.

[42] Mr Grobler attached the recent judgment of Cloete J, concurred in by Binns-Ward J, in *SA Legal Practice Council v Louw (Louw)*[24] to his heads of argument in support of his submission that the rule *nisi* might be confirmed as Maree needed to be subjected to a disciplinary hearing, but that nothing stood in the way of the LPC issuing a FFC to Cronje as it only needed to perform a mere 'mechanical administrative act.'[25] *Louw* must be considered in perspective. It is totally distinguishable on the facts. Mr Louw was a sole practitioner. His bookkeeper stole trust monies in excess of R4 million which he detected and reported to the LPC. He was cleared of dishonesty by an Investigating Committee of the LPC, but was nonetheless suspended from practice pending disciplinary proceedings against him arising from the same facts. The LPC

[23] Counter-application: annexure LC30, pp 112-132, being the letter of Kruger Venter Maree Inc to the LPC, indicating the trust shortages on p 116 and attached thereto the qualified audit report with particular reference to the transgressions referred to on p 120.
[24] (10606/2023) [2024] ZAWCHC 80 (20 March 2024).
[25] Footnote 16 of Mr Grobler's heads of argument. For the record, Mr Grobler made the following submissions in his heads of argument to conclude his submissions: 'Conclusion: 4.1 The rule nisi concerning Mr Maree can be confirmed. He needs to be subjected to a disciplinary hearing. 4.2 The Third Respondent is to be put under curatorship, with the proviso that the LPC must be ordered to within 10 days from the date of this order, either register the Third Respondent as a new practice (as substitutory relief), or it must be finally decided on the application for registration. The application for FFC's may follow from there.'

declined to issue a FFC to Louw until he has paid into trust the monies stolen by his dishonest former employee. Having acknowledged the statutory requirement prescribed by s 84 of the Act, the court ordered Louw to apply in terms of s 85 for a FFC. Leave was also granted to him to apply to the High Court for an order compelling the LPC to issue a FFC in the event of the LPC failing to comply.

Conclusion

[43] I concluded that the rule *nisi* ought to be confirmed, subject to the amendment of paragraph 4 thereof as is reflected in the order. The costs of the main application stood over for later adjudication. There was no reason why the respondents should not pay the costs of the main application, jointly and severally, the one to pay the others to be absolved, on the scale as between attorney and client. As mentioned, there was no merit in the counter-application which was dismissed with costs on the same basis as above. Consequently, the order as set out above has been issued and handed down.

[redacted]

JP DAFFUE J

I concur

[redacted]

S CHESIWE J

Appearances

For appellant:	Adv MS Mazibuko
Instructed by:	Amade & Company Inc
	Bloemfontein
For respondent:	Mr CDM Kruger (the heads of argument were drafted by Adv S Grobler SC)
Instructed by:	Kruger Venter Inc
	Bloemfontein