IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Division, Pretoria)

Case no: 112621/24

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED.

DATE: 23 January 2025

SIGNATURE

Heard on: 13 November 2024

Judgment: 23 January 2025

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL	**APPLICANT**
AND	
DUMISA LEONARD SHABANGU	**FIRST RESPONDENT**
DL SHABANGU INCORPORATED ATTORNEYS	**SECOND RESPONDENT**

JUDGMENT

STRIJDOM, J

1. This is an urgent application for the removal of the first respondent's name from the roll of legal practitioners, alternatively, for the suspension of the first respondent from the roll of legal practitioners.

2. The first respondent was admitted and enrolled as an attorney of this Court on 4 March 2004. He practiced in various capacities at various law firms during the period 5 March 2004 until 24 July 2009. He commenced practising as a director under the name and style of DL Shabangu Incorporated Attorneys ("the Second Respondent") with effect from 1 April 2009. The name of the first respondent is still on the roll of legal practitioners of this Court.

3. At the commencement of this application the Court dismissed the preliminary issues raised by the respondents.

<u>The Preliminary Issues:</u>

<u>Urgency</u>

4. It was submitted by the respondents that section 43 of the LPA envisages that the Council resolution to institute these legal proceedings should have been pursuant to a disciplinary body informing the council that the disciplinary body is satisfied that the first respondent has misappropriated trust monies or is guilty of other serious misconduct. It was argued that contrary to what is contemplated in section 43 there was no disciplinary hearing against the first respondent, and he has not been found guilty of any misconduct.

5. Section 44 of the LPA provides that the provisions of the LPA do not derogate in any way from the power of the Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner or a juristic entity.

6. Incidents of misappropriation of trust funds are always urgent and deserve the earliest attention of the court in order to prevent further unjustified exposure of the Legal Practitioners' Fidelity Fund, which may increase by the hearing of a matter in the normal course.

7. In my view the applicant will not be afforded substantial relief at a hearing in due course.

No authority to act

8. It was argued by the respondents that the Council resolution to institute the proceedings was to seek for an order to suspend the first respondent and that the applicant does not have the authority to act outside the prescripts of the resolution.

9. The Courts' jurisdiction and power to exercise disciplinary jurisdiction over the first respondent and to pronounce upon an appropriate sanction is not derived solely from the provisions of the LPA. The Court has such inherent and common law power. The Notice of Motion is also formulated in line with the provisions of the Practice Directive which gives the court a wider discretion.

Lack of personal knowledge

10. The issue here is that the respondents argued that the deponent of the founding affidavit lack personal knowledge of the facts underlying the complaints lodged by several complainants and as a result the facts constitute hearsay evidence.

11. This point *in limine* is moot because the qualification is provided for in paragraph 1.5 of the founding affidavit. In paragraph 1.5 of the founding affidavit the deponent stated that:

"*The contents of this affidavit, where they are within my own knowledge, are true and correct. Where the contents are not within my own knowledge, they have* *been made known to me and I believe in their veracity. Where possible they are confirmed by a confirmatory affidavit.* [1]

Premature proceedings

12. The respondents argued that the only time the Council can take a resolution to institute legal proceedings is after the legal practitioner was found guilty of misconduct and that the provisions of sections 37, 38 and 39 are peremptory.

13. It is trite that applications of this nature are *sui generis* and of disciplinary nature.

14. In the matter of *Du Plessis v Prokureursorde, Transvaal* [2] it was held that:

> "*The Law Society could even bring an application for removal without any preceding investigations having been conducted." It was further held that "the application for removal was a matter where the Court had to consider the alleged conduct of the applicant. The respondent did not act as a party in this matter but in its capacity as custos mores to assist the Court."*

15. Section 44 of the LPA provides that the provisions of the LPA do not derogate in any way from the power of the Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner or a juristic entity.

16. It could not have been the intention and requirement of the LPA, that where a complainant brings the application to suspend or to strike off, there should first be a disciplinary hearing conducted and concluded by the LPC.

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[1] Caselines: Founding affidavit 03-5 para 1.5

[2] 2002 (4) SA 344 (T). See also *Bothma v Law Society of the Northern Province 2017 JDR 1021 (GP) and Melato v The South African Council 2021 JDR 1692 (FB).*

The merits

Outstanding audit report[3]

17. The first respondent acknowledged that his audit report for the period ending 2024, remains outstanding.

Outstanding annual fees[4]

18. The first respondent owes the applicant annual fees in the total amount of R28 106,00.

Complaint by Nothando Mtshemla[5]

19. On 12 February 2024, the complainant attended at the first respondent's offices and signed a deed of sale. On 20 February, the complainant effected payment of the purchase price of R500 000,00 into the first respondent's trust account. Attempts to contact the first respondent proved fruitless.

Complaint by Ms Lindiso Mayenge[6]

20. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant effected payment of the purchase price, in the amount of R350 000-00, into the first respondent's trust account on 4 March 2024. The first respondent has failed to effect transfer of the property into the name of the complainant and to furnish the complainant with progress reports.

Complaint by Ms Langanami Gladys Nthulane[7]

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[3] Caselines: 03-19 to 03-21 FA
[4] Caselines: 03-21 FA
[5] Caselines: 03-21 FA
[6] Caselines: 03-24 to 03-27 FA
[7] Caselines: 03-27 to 03-31 FA

21. The complainant instructed the first respondent to attend to the transfer of immovable property into her name. The complainant effected payment of the purchase price, in the amount of R450 000-00 into the first respondent's trust account as follows: R250 000,00 on 23 February 2024 and R200 000,00 on 27 February 2024. The first respondent has failed to execute that mandate given to him.

<u>Complaints by Mr Dan Mambane</u>[8]

22. The complainant purchased two immovable properties, and the first respondent was instructed to attend to the transfer of same into the name of the complainant. The complainant effected payment of the purchase price in the amount of R400 000,00, in respect of Erf 1[...], I[...] P[...] X[...], into the first respondent's trust account on 19 January 2024. The complainant effected payment of the purchase price in the amount of R310 000,00 in respect of Erf 1[...], T[...] Section (Tembisa) into the first respondent's trust account on 25 January 2024. The first respondent has failed to execute the mandate given to him and to effect transfer of the said properties into the name of the complainant. The complainant registered a complaint with First National Bank's Fraud department. On 10 July 2024, the complainant was informed that the implicated account was blocked on 24 April 2024. The complainant's money could not be recovered as same was already "utilised in the implicated account."

23. The complainant proceeded to report the matter to the South African Police Services under case number 538/5/2024.

[8] Caselines: 03-31 to 03-34 FA

24. In a letter dated 13 August 2024, this complaint was forwarded by the applicant to the first respondent for his comment. The first respondent failed and/or neglected to answer to correspondence addressed to him by the applicant.

Complaint by Ms Henrietta Makhubela[9]

25. The complainant instructed the first respondent to attend to the transfer of immovable property into her name. The first respondent has failed to attend to the transfer of the immovable property into her name.

Complaint by Mr Tebatso Moseki[10]

26. The complainant instructed the first respondent to attend to the registration of immovable property into the name of the complainant. On 20 February 2024, the complainant effected payment of the purchase price, in the amount of R430 000,00 into the first respondent's trust account. The first respondent failed to execute the mandate given to him.

Complaint by Mr Sam Tshepo Mohlala[11]

27. On 9 February 2024, the complainant signed an offer to purchase Stand 3[...], I[...] P[...] X[...] and effected payment of the purchase price in the amount of R335 000,00, into the first respondent's trust account on 10 February 2024.

28. On 7 March 2024, the complainant signed a second offer to purchase Erf 1[...], K[...] X[...] and effected payment of the purchase price in the amount of R380 000,00 into the first respondent's trust account on 9 March 2024.

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[9] Caseslines:03-35 to 03-36 FA
[10] Caselines: 03-36 to 03-39 FA
[11] Caselines:03-39 to 03-43 FA

29. The complainant received an e-mail from the first respondent on 8 April 2024, indicating that both properties were “launched” and that same would be registered within 30 to 40 days. On 7 May 2024, the complainant received a further e-mail indicating that “both title deeds are in printing and both copies will be forwarded to me, once received. And I will have to go to the deeds office to pay a certain fee for the originals.” When the complainant made enquires at the Deeds Office it was established that the registration of the two properties had not taken place.

Complaint by Ms Prudence Nelisiwe Wattie[12]

30. The complainant purchased immovable property, and the first respondent was instructed to attend to the transfer and registration of the said property. The complainant effected payment of R200 000,00, into the first respondent’s trust account which represented the purchase price of the property. The first respondent informed the complainant of a scam by the agent and that First National Bank had blocked his firm’s bank account.

Complaint by Ms Pauline Portia Ndaba[13]

31. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant indicated that the transaction was not proceeded with and that the respondent has failed to refund the R150 000,00 deposit which the complainant paid into the firm’s trust account.

Complaint by Mr Jabulani Michael Mahlangu[14]

[12] Caselines: 03-43 to 03-47 FA
[13] Caselines: 03-47 to 03-50
[14] Caselines: 03-50 to 03-52 FA

32. The complainant instructed the first respondent to attend to the transfer of immovable property into his name. The complainant effected payment of the purchase price in the amount of R580 000,00 into the firm's trust account on 10 January 2024. The first respondent failed to pay the seller. In his response to the complaint, the first respondent confirmed that the complainant paid an amount of R580 000,00 into the firm's trust account and that he was in the process of communicating with the complainant in an attempt to resolve the matter.

Complaint by Ms Dineo Eugine Modiba[15]

33. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. On 4 January 2024, the complainant effected payment of the purchase price in the amount of R200 000,00 into the firm's trust account. The first respondent has failed to execute the mandate to transfer the immovable property into the name of the complainant.

Complaint by Mr Richard Jabulani Nkuta[16]

34. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant effected payment of R200 000,00, into the first respondent's trust account on 11 March 2021. The first respondent is refusing to refund the complainant.

Complaint by Ms Mpho Mulvolian Makhodo[17]

35. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant had paid an amount

[15] Caselines: 03-53 to 03 FA
[16] Caselines: 03-59 to 03-62
[17] Caselines: 03-59 to 03-62

of R290 000,00 into the trust account of the first respondent on 7 February 2024. The complainant is demanding a refund of her money.

Complaint by Mr Tshepo Mogale[18]

36. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant had paid the purchase price into the first respondent's trust account. The complainant attended at the first respondent's offices on two occasions but found the offices locked. The first respondent is not responding to the complainant's e-mails or telephone calls.

Complaint by Ms Margaret Dimakatso Matsetela[19]

37. First respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant had paid the purchase price of R270 000,00 into the firm's trust account on 16 January 2024. The complainant indicated that the first respondent is ignoring her telephone calls and her whatsapp messages.

Complaint by Mr Victor Mafori Leshilo[20]

38. The first respondent was instructed to attend to the transfer of immovable property into the name of the complainant. The complainant had paid the purchases price in the amount of R380 000,00, into the firm's trust account on 13 February 2024. The complainant indicated that the first respondent has not answered any of his telephone calls and has failed to furnish the complaint with progress reports. First respondent confirmed that the purchase price was paid

[18] Caselines: 03-62 to 03-65 FA
[19] Caselines:03-65 to 03-68 FA
[20] Caselines: 03-68 to 03-71 FA

into his firm's trust account and that he was in communication with the complainant to reach an amicable solution. In a letter dated 27 June 2924, the first respondent was requested to indicate whether the matter was resolved. The first respondent failed to answer to correspondence addressed to him by the applicant.

Complaint by Mr Tiyiselani Dennis Mabasa[21]

39. The complainant purchased immovable property and had paid the purchase price of R450 000,00, into the first respondent's trust account on 17 January 2014. The complainant was later informed by the estate agent that the transaction could no longer proceed. The first respondent failed/refused to refund the complainant and failed to answer any telephone calls or e-mails.

Complaint by Ms Girlie Ditabe[22]

40. The complainant met with the first respondent and signed documents in relation to the purchase of immovable property. The complainant had paid the purchase price, in the amount of R400 000,00, into the first respondent's trust account on 5 March 2024. The complainant later informed the first respondent of her decision to cancel the transaction and requested a refund of her money. The first respondent has failed to refund the complainant and has subsequently blocked her call.

Complaint by Ms Ntombikayise Gaba[23]

41. The complainant instructed the first respondent to attend to the transfer of immovable property into her name. The complainant had paid the purchase

[21] Caselines: 03-71 to 03-74 FA
[22] Caselines: 03-75 to 03-78
[23] Caselines: 03-78 to 03-81 FA

price of R170 000,00, into the first respondent's trust account as follows: on 14 December 2023 an amount of R140 000,00 and on 9 January 2024 an amount of R30 000,00. The complainant indicated that the first respondent has not responded to her e-mails and has not furnished her with progress reports.

Complaint by Mr Phetole Bosoma[24]

42. The complainant instructed the first respondent to attend to the transfer of immovable property into his name. He had paid the purchase price, in the amount of R250 000,00 into the firm's trust account on 31 October 2023. The complainant indicated that the first respondent is ignoring his telephone calls. In his response to the complaint, the first respondent confirmed that he was instructed to attend to the transfer of the immovable property into the name of the complainant and that the purchase price was paid into his firm's trust account. He indicated that he was in communication with the complainant's legal representative.

Complaint by Mr Mzamani Ballam Tshabalala[25]

43. The complainant instructed the first respondent to attend to the transfer of immovable property into his name. The complainant had paid the purchase price of R300 00,00 into the first respondent's trust account on 27 November 2023. The complainant noticed that the property that he had purchased, was again advertised on 27 January 2024. When the complainant attended at the offices of the first respondent on 1 February 2024, he was informed that the firm had vacated the building.

44. In his response to the complaint, the first respondent confirmed that he was instructed to attend to the transfer of the immovable property and that the

[24] Caselines: 03-81-03-84 FA
[25] Caselines: 03-84-03-87

purchase price was paid into his firm's trust account. He indicated that he was in communication with the complainant's legal representative to resolve the matter.

<u>Complaint by Ms Janeth Ceciliah Moabelo</u>[26]

45. The complainant instructed the first respondent to attend to the transfer of immovable property into her name. The complainant had paid the purchase price, in the amount of R150 000,00, into the first respondent's trust account on 24 April 2023. As a result of the first respondent's failure to execute the mandate the complainant requested a refund of her money.

46. The first respondent confirmed that he was instructed to attend to the transfer of the immovable property and that the purchase price was paid into the firm's trust account. The first respondent indicated that he was in communication with the complainant to resolve the matter.

<u>Report by Philasande Nyali</u>[27]

47. Mr Philasande ("Nyali") a chartered accountant who is employed in the applicant's Risk and Compliance Unit and who has expertise in conducting investigations into attorneys' practices, the manner in which they maintain their accounting records and the manner in which they operate on their trust banking accounts was instructed to conduct an investigation into the first respondent's practice. Nyali furnished the applicant with a report dated 16 July 2024 (annexure "A57" to the founding affidavit.

48. Nyali met with the first respondent and requested specific accounting records for purposes of the inspection. To date, the first respondent has failed to furnish

[26] Caselines: 03-87 to 03-92
[27] Caselines: 04-478 to 04-809, Annexure A 57 to founding affidavit. 04-810 Confirmatory affidavit. Founding affidavit 03-93 to 03-100

Nyali with the requested information. The first respondent advised that he did not keep accounting records because his firm's trust account was dormant prior to the 2024 financial year.

49. The first respondent informed Nyali that he had started receiving trust deposits in the 2024 financial year and that the deposits related to property transactions. According to the fist respondent, these deposits were not recorded in the firm's accounting records.

50. The firm held a trust account at First National bank, account number 6[...], with a credit balance of R1 187 889,84 as at 31 May 2024.

51. Nyali's report demonstrates that; between the period April 2023 to March 2024, a total amount of R10 645 000,00, had been paid into the trust account of the first respondent's firm. These payments relate to approximately 44 transactions. Nyali calculated the trust deficit in the region of R9 457 110,16.

The Respondent's answering affidavit and the Applicant's reply thereto[28]

52. In respect of the complainants which are set out in paragraphs 18 to 39 of the founding affidavit the first respondent states the following:

    52.1 On or about 15 January 2023 he consulted with Jonothan Thobakgale who advised him that he wishes to enlist his services as an attorney to act as his attorney for his personal and business matters requiring legal services. He accepted the mandate to act as an attorney for Jonathan Thobakgale.

    52.2 Jonathan Thobakgale instructed him that he is in the business of development of immovable property and selling of same. He also instructed him that some of the immovable properties that he develops

[28] Caselines: 11-1 to 11-36 Answering affidavit; 12-1 to 12-54 Replying affidavit

and sell belongs to him and some belongs to third parties who would have given him a mandate to do so. He also informed the first respondent that he makes his money by selling the developed properties at a profit or as a commission for being an agent for selling the properties for third parties.

52.3 The first respondent was further instructed by Jonathan Thobakgale that he must allow him to use the trust account of second respondent as an escrow account. The first respondent accepted this mandate and gave him the banking details of the trust account of second respondent. For this the first respondent will receive a fee. Jonathan Thobakgale would from time to time inform him that he has concluded a transaction, and monies would be paid into the trust account of second respondent. The first respondent would then pay these amounts after deducting his fee.

52.4 The first respondent states that he has never met any of the said complainants prior to the monies being deposited into the trust account of the second respondent.

52.5 During March 2024, the first respondent started receiving calls from some of the complainants who were enquiring about their matters. He began to suspect there was something wrong with these transactions and as a result he called Jonathan Thobakgale and suggested that he should sort out these issues. He also authorised the bank to freeze the trust account.

53. In its replying affidavit the applicant reiterated that the first respondent has failed to adequately address the issues pertaining to his masquerading as a conveyancer and his failure to execute mandates. The first respondent also failed to address the pertinent issues pertaining to his failure to account to the complainants and to effect payment of trust funds in favour of trust creditors which had been paid into his firm’s trust account over the period April 2023 to March 2024. The applicant maintains that the first respondent has contravened

the provisions of the LPA the Code of Conduct, the LPC Rules and the Rules for the Attorneys' Profession.[29]

Spurious disputes of fact: 'robust approach' necessary

54. In the case of *Room Hire Co (Pty) Ltd v Jeppe Street mansions (Pty) Ltd*[30] the Court outlined this approach:

"*Enough mut be stated by respondent to enable the Court to conduct a preliminary investigation … and to ascertain whether the denials are not fictitious intended merely to delay the hearing. The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard."*

55. It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it would be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over fastidious approach to a dispute raised in the affidavits.

56. It is not in dispute that the first respondent received money from the complainants into his firm's trust account, in respect of conveyancing matters whilst not being admitted as a conveyancer. The first respondent then proceeded to transfer trust funds to third parties without the consent or instruction of the person who deposited the money into his firms trust account.

57. I have carefully perused the affidavits and after considering the nature and extent of the factual disputes arising from the affidavits, I have come to the conclusion that the probabilities favour the applicant. In my view there are no material

[29] Caselines: 12-18 paragraphs 24.2 to 24.3 Replying affidavit.
[30] 1949 (3) SA 1155 (T) at 1165

disputes of fact and under the circumstance it is appropriate to decide the alleged dispute without hearing oral evidence. I am satisfied that a *viva voce* examination and cross-examination will not disturb the balance of probabilities.

<u>Legal principles</u>

58. It is trite law that applications of this nature are *sui generis* and of a disciplinary nature. There is no *lis* between the applicant and the respondents. The applicant, as *custos morum* of the profession merely places facts before the Court for consideration.[31]

59. The question whether a legal practitioner is a fit and proper person is not dependent upon factual findings but lies in the discretion of the Court.[32]

60. In matters of this nature the enquiry is threefold, namely:

60.1 The Court must first decide as a matter of fact whether the alleged offending conduct by the legal practitioner has been established.

60.2 If the Court is satisfied that the offending conduct has been established, a valued judgment is required to decide whether the person concerned is not a fit and proper person to practice as a legal practitioner.

60.3 If the Court decided that the legal practitioner concerned is not a fit and proper person to practice as a legal practitioner, it must decide in the exercise of its discretion whether in all the circumstances of the case the legal practitioner in question is to be removed from the roll or merely suspended form practice. Ultimately this is a question of degree.

[31] *Prokureursorde van Transvaal vs Kleynhans* 1995 (1) SA 839 (T)
[32] *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A)

61. The Court’s discretion must be based upon the facts before it and the facts must be proved upon a balance of probabilities. The facts should be considered in their totality.

62. A legal practitioner must scrupulously comply with the provisions of the Legal Practice Act, the Attorneys Act and the Rules for the Attorneys Profession especially in relation to the money of a client which is placed into his/her custody and control. Trust money does not form part of the assets of a legal practitioner. The very essence of a trust fund is the absence of risk, and the confidence created thereby.

63. A legal practitioner must always prefer the interest of his/her clients above his/her own and must exercise the highest degree of good faith in his/her dealings with his/her clients.

64. A legal practitioner is a member of a learned, respected and honourable profession and, by entering it, he/she pledges himself/herself with total and unquestionable integrity to society at large, to the Courts and to the profession.

65. The image and standing of the profession are judged by the conduct and reputation of all its members and, to maintain this confidence and trust all members of the profession must exhibit the qualities set out above at all times.

66. The law expects from a legal practitioner *uberrima fides*, the highest possible degree of good faith in his dealings with his client, which implies that at all times his submissions and representations to client must be accurate, honest and frank.

Conclusions

67. In almost all of the above complaints, it is alleged that the first respondent was instructed to attend to the transfer of immovable properties on behalf of the complainants. The complainants proceeded to effect payment of deposits and purchase prices into the trust account of the first respondent's firm. The respondent failed to execute the mandates given to him or to furnish the complainants with updates regarding their property transactions. The first respondent has not been admitted as a conveyancer and masqueraded as such to the detriment of the complainants.

68. The first respondent blames Mr Thobakgale and that he had basically made the payments from his firm's trust account on instructions of Mr Thobakgale. In my view the references to allegations about Mr Thobakgale constitutes inadmissible hearsay. It was incumbent upon the first respondent to obtain a confirmatory affidavit from Mr Thobakgale.

69. The first respondent was not authorised to utilise the said funds as it is evident that there was no work done by the first respondent entitling him to any fees. The first respondent transferred money to third parties without the instruction or consent of the persons who deposited the money into his firm's trust account as stipulated in Rule 54.13 of the LPC Rules.

70. Rule 54.14.14 of the LPC Rules provides that withdrawals from a firm's trust account shall be made only to or for a trust creditor; or as transfers to the firm's business banking account, provided that such transfers shall be made only in respect of money due to the firm; provided that no transfer from its trust banking account to its business banking account is made in respect of any disbursement (including counsel's fees) or fees of the firm unless the disbursements have actually been made and debited by the firm; or a contractual obligation has aroused on the part of the firm to pay the disbursement; or fees and disbursements have been correctly debited in its accounting records.

71. The first respondent is an experienced attorney with many years of experience. It is highly improbable that the first respondent was not aware that he was not entitled to utilise the funds held in the firm's trust account or to transfer the funds to persons other than the firm's trust creditors.

72. A further disturbing aspect is the fact that the first respondent failed to register the said transactions in the firm's accounting records.

73. The first respondent does not dispute receipt of the various correspondence sent to him by the applicant with regards to the complaints lodged against him. He chose to only respond to six of the complaints.

74. The evidence revealed that the first respondent contravened various provisions of the Rules of the Attorneys Profession, the Legal Practice Act, the Code of Conduct and the LPC Rules.

75. The Court is of the view that some of these transgressions were by themselves sufficient to merit action against the respondent. It is clear that when the cumulative effect of all the transgressions and the nature and seriousness thereof were taken into account, only one conclusion is possible, viz that the respondent fell far short of the standards required of an attorney, and that he is therefore not a fit and proper person to practise as such.

76. In the result the following order is made:

1. That the Honourable Court dispenses with the forms and service provided for in the Uniform Rules in terms of rule 6(12)(a) and disposes of this matter as one of urgency at such time and place and in such manner and in accordance with such procedures as to it seems meet.

2. That the name of DUMISA LEONARD SHABANGU (hereinafter referred to as the First Respondent) be removed from the roll of legal practitioners of this Honourable Court.

3. That the First Respondent immediately surrenders and delivers to the registrar of this Honourable Court his certificate of enrolment as a legal practitioner of this Honourable Court.

4. 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 to hand it to the Registrar of this Honourable Court.

5. That the Respondents be prohibited from handling or operating on the trust accounts as detailed in paragraph 6 hereof.

6. That Ignatius Wilhelm Briel, the Director of the Gauteng Provincial Office of the Applicant, be appointed as curator bonis (curator) to administer and control the trust accounts of the Respondents, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the First Respondent's practice as a legal practitioner and including, also, the separate banking accounts opened and kept by Respondents at a bank in the Republic of South Africa in terms of section 86(1) & (2) of Act No 28 of 2014 and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4) of Act No. 28 of 2014, 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:

6.1 Immediately to take possession of the Respondents' accounting records, records, files and documents as referred to in paragraph 7 and subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control (hereinafter referred to as the fund) 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 Respondents were acting at the date of this order;

6.2 Subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control and where monies had 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 Respondents in respect of monies held, received and/or invested by the Respondents in terms of section 86(1) & (2) and/or section 86(3) and/or section 86(4) of Act No 28 of 2014 (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 Respondents were and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

6.3 to ascertain from the Respondents' accounting records the names of all persons on whose account the Respondents appear to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon the Respondents to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

6.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondents and, if so, the amount of such claim;

6.5 to admit or reject, in whole or in part, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;

6.6 having determined the amounts which, he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

6.7 in the event of there being any surplus in the trust account(s) of the Respondents after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 86(5) of Act No 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondents, the costs, fees and expenses referred to in paragraph 13 of this order, or such portion thereof as has not already been separately paid by the Respondents to the Applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Legal Practitioners’ Fidelity Fund Board of Control, to the First Respondent, if he is solvent, or, if the First Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

6.8 in the event of there being insufficient trust monies in the trust banking account(s) of the Respondents, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Legal Practitioners’ Fidelity Fund;

6.9 subject to the approval of the chairman of the Legal Practitioners’ Fidelity Fund Board of Control, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

6.10 to render from time to time, as curator, returns to the Legal Practitioners’ Fidelity Fund Board of Control showing how the trust account(s) of the Respondents has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

7. That the Respondents immediately deliver the accounting records, records, files and documents containing particulars and information relating to:

7.1 any monies received, held or paid by the Respondents for or on account of any person while practising as a legal practitioner;

7.2 any monies invested by the Respondents in terms of section 86(3) and/or section 86(4) of Act No 28 of 2014;

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

7.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the Respondents, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

7.5 any insolvent estate administered by the Respondents as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

7.6 any trust administered by the Respondents as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

7.7 any company liquidated in terms of the provisions of the Companies Act, no 61 of 1973 read together with the provisions of the Companies Act, no 71 of 2008, administered by the Respondents as or on behalf of the liquidator;

7.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the Respondents as or on behalf of the liquidator; and

7.9 the First Respondent's practice as a legal practitioner of this Honourable Court, to the curator appointed in terms of paragraph 6 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the Respondents shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

8. That should the First Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a

return by the person entrusted with the service thereof that he has been unable to effect service thereof on the First Respondent (as the case may be), 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.

9. That the curator shall be entitled to:

9.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

9.2 require from the persons referred to in paragraph 9.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the Respondents and/or the Respondents' clients and/or fund in respect of money and/or other property entrusted to the Respondents provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

9.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and 9.4 wind-up of the First Respondent's practice.

10. That the First Respondent be and is hereby removed from office as:

10.1 executor of any estate of which the First Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, no 66 of 1965 or the estate of any other person referred to in section 72(1);

10.2 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, No 66 of 1965;

10.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

10.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, no 61 of 1973 and read together with the provisions of the Companies Act, No 71 of 2008;

10.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

10.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

10.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.

11. That if there are any trust funds available the Respondents 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, shall 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 the First Respondent in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;

12. That a certificate issued by a director of the Legal Practitioners' Fidelity Fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

13. That the Respondents be and are hereby directed:

13.1 to pay, in terms of section 87(2) of Act No. 28 of 2014, the reasonable costs of the inspection of the accounting records of the Respondents;

13.2 to pay the reasonable fees of the auditor engaged by Applicant;

13.3 to pay the reasonable fees and expenses of the curator, including travelling time;

13.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

13.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

13.6 to pay the costs of this application on an attorney-and-client scale and on scale B in terms of Rule 69(7) of the Uniform Rules of Court.

JJ STRIJDOM
JUDGE OF THE HIGH COURT OF
SOUTH-AFRICA, GAUTENG
DIVISION, PRETORIA

APPEARANCES:

For the applicant:	**Adv JM Moolman**
Instructed by:	**Damons Magardie Richardson Attorneys**
For the Respondent:	**Adv B Shabangu**
Instructed by:	**Ledwaba Mazwai Attorneys**