



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 23500/2020

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 15 APRIL 2025

SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

SIMPHIWE FREEMAN DUBE

Respondent

Summary: *Legal practitioners – Misconduct – Offending conduct had been established – mostly relating to overreaching, lack of reporting and accounting to clients and misappropriation of the proceeds of clients' damages payments received from the Road Accident Fund. The practitioner had previously been suspended from practice but offending conduct kept being repeated. Practitioner not fit and proper to continue practice as a legal practitioner. Sanction of striking off merited. Such an order was granted and, due to the*

nature of the conduct and the manner in which the practitioner had conducted the litigation a punitive costs order was also justified.

ORDER

1. The respondent, Simphiwe Freeman Dube is struck from the roll of legal practitioners of this Court and the Legal Practice Council is directed to remove his name from the roll of attorneys.
2. The respondent is ordered to immediately surrender and deliver to the Registrar of Court his previous certificate of enrolment as an attorney of this Court.
3. In the event of the respondent failing to comply with the terms of paragraph 2 above within one week from the date of service of this order, the sheriff of the relevant district is authorised and directed to take possession of the certificate and hand it to the Registrar.
4. The respondent is prohibited from handling or operating on the trust accounts as detailed in paragraph 5 hereof, from date of service of this order.
5. Ignatius Wilhelm Briel, the Director of the Gauteng Provincial Office of the applicant, is 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 respondent's practice as legal practitioner 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) & (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-section 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:

- 5.1. Immediately to take possession of the respondent's 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 was acting at the date of this order.
- 5.2. 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 respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s).

- 5.3. 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, 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.
- 5.4. 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 claim in respect of monies in the trust account(s) of the respondent and, if so, the amount of such claim.
- 5.5. To admit or reject, in whole or in part, subject to the approval of the 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.
- 5.6. 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.

- 5.7. 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 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 or the respondent, 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 respondent to the Legal Practice Council, 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 respondent, if he is solvent, or, if the respondent is insolvent, to the trustee(s) if the respondent's insolvent estate.
- 5.8. In the event of there being insufficient trust monies in the trust banking account(s) of the respondent, 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.
- 5.9. 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

5.10. 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 respondent has been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. The respondent is immediately upon service upon him of this order, ordered to deliver the accounting records, files and documents containing particulars and information relating to the following to the *curator bonis*:

- 6.1. any monies received, held or paid by the respondent for or on account of any person while practising as a legal practitioner;
- 6.2. any monies invested by the respondent in terms of section 86(3) and/or section 86(4) of Act No 28 of 2014;
- 6.3. any interest on monies so invested which was paid over or credited to the respondent;
- 6.4. any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the respondent whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

- 6.5. any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 6.6. any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 6.7. 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 respondent as or on behalf of the liquidator;
 - 6.8. any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the respondent as or on behalf of the liquidator.
7. Should the 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 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.
 8. The curator shall be entitled to:
 - 8.1. hand over to the person 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;

- 8.2. 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 his 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;
 - 8.3. publish this order or an abridge version thereof in any newspaper he considers appropriate; and 9.4 wind-up of the respondent's practice.
9. The respondent is hereby removed from the office as:
- 9.1. 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, no 66 of 1965 or the estate of any other person referred to in section 72(1);
 - 9.2. 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;
 - 9.3. trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

- 9.4. 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;
 - 9.5. trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
 - 9.6. liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and
 - 9.7. administrator appointed in terms of Section 74 of the Magistrate Court Act, No 32 of 1944.
10. If there are any trust funds available, 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 the respondent in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof.
 11. 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.
 12. The respondent is hereby ordered to:

- 12.1. 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 respondent;
 - 12.2. pay the reasonable fees of the auditor engaged by applicant;
 - 12.3. pay the reasonable fees and expenses of the curator, including traveling time.
13. The respondent is ordered to pay the applicant's costs of the application on an attorney and client scale.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of the matter on Caselines. The date of the handing-down is deemed to be 15 April 2025.

DAVIS, J (with Lenyai J concurring)

Introduction

[1] This is an application by the Legal Practice Council (the LPC) for the striking off of a legal practitioner from the roll of practitioners. The legal practitioner in question is an attorney, Mr Simphiwe Freeman Dube.

[2] The matter came before us by way of a direction from the Deputy Judge President (the DJP) pursuant to an order granted on 27 August 2021 by Tlhapi J and Mnyovu AJ.

[3] Due to a late interpretational attack on the order, it is necessary to refer to the relevant part thereof in full:

“The application to suspend or strike the respondent from the roll of attorneys is referred to a freshly constituted bench of this Court for its determination after hearing such oral evidence, on the following aspects:

- (a) On the bill of costs which respondent alleges he was not given proper opportunity to prepare his defence;*
- (b) That the circumstances under which the payment of R100 000.00 was demanded from Mazive; whether this constitutes a transgressions of the LPC Rules, Code of Conduct of LPA, and certain sections of the Legal Practice Act;*
- (c) The applicant is ordered to avail the respondent with all the documents it acquired from different sources with regard to the Mazive complaint and the Bill of costs in order to prepare his defence, within thirty days from date of this order”.*

[4] We shall deal with the interpretational attack later, but to place it and the way in which the hearing of the application enfolded before us into perspective, some context is needed.

Procedural history

[5] After the above order had been granted, the matter was initially re-enrolled for hearing on 5 May 2022, but it was then removed from the roll.

[6] On 13 September 2022 the LPC delivered a supplementary founding affidavit. The respondent did not respond thereto.

[7] On 9 December 2022 the respondent delivered an application for leave to appeal the referral ruling¹ granted on 27 August 2021.

[8] On 29 August 2023 the court (differently constituted) granted condonation for the more than a year late delivery of the application for leave to appeal and refused leave.

[9] On 21 June 2024 the LPC delivered a second supplementary affidavit. The LPC contended that, due to its oversight role of the legal profession, it was obliged to place further evidence of possible misconduct by a practitioner before a court and, due to the proceedings before us being of a *sui generis* nature, no leave nor condonation for the delivery of such an affidavit was necessary². In our view, this contention is correct.

[10] At a re-hearing meeting between the parties, held on 1 August 2024, the following was recorded in draft minutes: “*Mr Stocker recorded that the applicant has delivered two supplementary founding affidavits, to which the respondent has thus far not answered. Mr Stocker further recorded that the supplementary founding affidavits disclosed serious allegations of misconduct on the part of the respondent, and that he will argue that the respondents should be struck from the roll based on the contents of those supplementary founding affidavits alone. Mr*

¹ A referral for the hearing of oral evidence, is generally considered a “ruling,” as opposed to a “judgment” or “order”. See *Pfizer Inc, v SA Druggists Ltd* 1987(1) SA 295 (T) and *Man Truck & Bus (Pty) Ltd v Dorbyl Ltd* 2004 (5) SA 226 (SCA) par 21.

² *South African Legal Practice Council v Ntsie* (52311/19) [2022] ZAGPPHC 131 (8 March 2022) at par 6.

Stocker called upon the respondent to deliver answering affidavits to the supplementary founding affidavit. Adv Mokotedi SC indicated that this is an issued which can be discussed at the prehearing conference, to which Mr Stocker agreed”.

[11] Before us in open court Adv Mokotedi SC, who appeared for the respondent, confirmed the correctness of the minutes. He informed us that he had referred the contents thereof to his instructing attorney.

[12] Despite the above, the instructing attorney failed to sign the draft minutes, despite having been directed by the DJP to do so on 24 October 2024.

[13] Despite fruitless attempts by the LPC, a further pre-hearing conference could not be held with the respondent’s representatives.

[14] In the end, the DJP on 20 February 2025 directed in writing that the matter, including the hearing of oral evidence, be heard by us as a newly constituted full bench over the course of two days. The DJP’s directive also contained the following admonition: *“Should it, for any reason(s) transpire that the matter will not proceed on the allocated date/s, you are directed to inform the office of the Deputy Judge President via email ... immediately. The non-availability of counsel representing any of the parties shall simply not be allowed as a reason for the matter not to proceed on the date of hearing arranged with my office”.*

[15] On 21 February 2025, the LPC’s attorney wrote to the respondent’s attorney, copying the respondent and adv Mokotedi SC. In the letter it was again placed on record that there had been no response to the two supplementary founding affidavits. The previous minute and the recordal quoted earlier were also referred to. After referring to the ignored requests to hold a further pre-hearing conference, the attorneys concluded as follows: *“We are placing the*

above on record because we anticipate that you may ask for a postponement of the matter on 13 March 2025 in order to file your answers to our supplementary founding affidavits. We will oppose any such request for a postponement. You have had ample opportunity to deliver such affidavits and you have expressly been called upon to do so on a number of occasions. A postponement of the matter at this stage will not be countenanced”.

[16] At the commencement of the hearing of the matter, we were informed that there was some kind of misunderstanding between Adv Mokotedi SC and the respondent’s attorney. Nevertheless, after standing down for an hour, Adv Mokotedi SC made his appearance. He confirmed that he had informed the attorney of his unavailability for 13 March 2025, as he had a separate brief to attend to, incidentally at an LPC disciplinary hearing (for a client).

[17] Despite Adv Mokotedi SC’s other brief, he was briefed to inform us that the respondent had delivered a petition to the Supreme Court of Appeal (the SCA) for leave to appeal the ruling in the main application whereby it had been referred for the hearing of oral evidence. In response, the LPC referred to an email letter whereby a correspondent in Bloemfontein had confirmed that the SCA’s registrar had refused to accept this petition³.

[18] Based on the abovementioned disclosure, Adv Mokotedi SC (and apparently his attorney and the respondent) assumed that the hearing of the matter before us would be suspended and postponed.

[19] We declined to agree with this proposition as it is by now settled law that a belatedly delivered petition for leave to appeal, does not suspend a prior order. For this view, we relied on the following dictum⁴: “*Prior to the enactment of the*

³ For “petition”, read “application”. See:

⁴ *Panayioutiou v Shoprite Checkers (Pty) Ltd* 2016 (3) SA 110 (GJ) at paras 14 and 15.

Superior Courts Act and, in particular, ss 16 – 18, rule 49(11) of the Uniform Rules of Court regulated this matter Rule 49(11) was deleted from the rules on 17 April 2015 (GN 317 in GG 38694 of 17 April 2015). Addressing the provisions of that rule, it was held in Modderfontein Squatters, Greater Benoni City Council v Modderklip Boedery (Pty) Ltd (Agri SA and Legal Resources Centre, amici Curiae); President of the Republic of the Republic of South Africa and Others v modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae) 2004 (6) SA 40 (SCA) (200 (8) BCLR 821; [2004] 3 All SA 169) para 46: ‘The [argument] was based on Uniform Rule 49(11), which provides that, where an appeal had been noted or an application for leave to appeal made, the operation and execution of the order is suspended. In this case, as will appear soon in more detail, the Modder East Squatters lodged their application for leave to appeal together with an application for condonation some 18 months after the order had issued. The right to apply for leave to appeal, by then had lapsed. Rule 49(11) presupposes a valid application for leave to appeal to effect the suspension of an order. In this case, there was none’.

[15] *The inherent logic of the position is unassailable. It can be tested by asking what would happen if many months or years were to pass before an application for condonation is lodged. It is untenable that upon the service of a condonation application the judgment would then be suspended’.*

[20] After having made the ruling that the order of 21 August 2021 had not been suspended by the belated petition, an oral request for postponement was made from the bar that the application then be postponed until the condonation application for the later petition had been heard. It was at that time that we were informed by Mr Stocker on behalf of the LPC that the petition had in fact not yet been formally lodged as the Registrar of the Supreme Court of Appeal had refused such lodgment due to the incompleteness of documentation. The incomplete

documentation apparently constituted the judgment or order whereby leave had initially been refused.

[21] There was no substantive application for this postponement request and no evidence placed before court by way of affidavit from the respondent, who is an officer of this court, explaining why this indulgence should be granted, and why we should not follow the judgment quoted above. Accordingly, we refused the request for postponement.

[22] Hereafter, another request was made on behalf of the respondent, this time for an opportunity to obtain alternate counsel. This request was coupled with an assertion that the attorney and the respondent was allegedly under the impression that the matter was set down for the next day, Friday 14 March 2025. In view of the contents of the letter from the DJP dated 20 February 2025, we rejected this contention, but granted the request for time to brief another counsel and stood the matter down to 14h00.

[23] To our great surprise, at 14h00 Adv Mokotedi SC appeared for the respondent, having apparently disposed of his prior brief. We then commenced the hearing of oral evidence.

The oral evidence

[24] The LPC led the evidence of Mr Carlos Mazive. He was the complainant in a disciplinary hearing where the respondent had been charged with contravention of Rule 35.11 read with Rule 40.7 of the Rules for the Attorney's professions for having failed to properly account to his client, Rule 49.6 for having overcharged his client, Rule 40.14 for having misappropriated funds in the matter of Mr Mazive. The respondent had been found guilty on all the charges.

[25] The issues in question which were addressed by this witness, were the accounting to him regarding the capital amount and fees in a claim against the Road Accident Fund (the RAF), handled on his behalf by the respondent and then the disputed R100 000.00 referred to in the referral order.

[26] In respect of the RAF claim, the evidence was briefly the following: Mr Mazive was involved in a motor vehicle accident in 2010. He was hospitalized as a result of the injuries sustained and was visited in hospital by the respondent who subsequently pursued his claim against the RAF. He attended the High Court on the trial date of 14 September 2011. During the course of the morning, he was handed a piece of paper by the respondent, on which the amount of R1 333 255.00 had been written.

[27] Mr Mazive was told that this was the amount on which the matter could be settled. When he protested, the respondent told him that if he did not accept the amount, it would be five years before the matter can be re-enrolled. He then consented but remembered the judge, upon being presented with the settlement, commenting: "*Mr Dube, I do not want to see your client coming back to beg again*". After this the respondent said that he would contact Mr Mazive once the money is paid out.

[28] On 12 October 2011 Mr Mazive met the respondent at the latter's instance in an office in a bottle-store. There the respondent handed him a typed page which read as follows:

TOTAL AMOUNT PAID	=	R1 333 255.00
LESS 20% CONTINGENCY	=	R 333 313.00
LESS ADVOCATES FEES	=	R 51 000.00
TOTAL DUE TO CLIENT	=	R 94 895.00

[29] It was cleared up that the amount of R94 895.00 was merely a typographical error and everyone understood the calculation amount to be R948 942, which is what was paid to Mr Mazive in October 2011.

[30] Mr Mazive testified that the above statement was “explained” to him by the respondent as being in accordance with their agreement, although Mr Mazive later claimed that their agreement was for a 15% and not a 25% contingency fee. There is some dispute about this, although it featured against in Mr Mazive’s claim to the LPC. However, what he was firm about, is that no other bill on a party and party scale or amount of disbursements nor any bill on an attorney and client scale had been shown to him or been discussed with him.

[31] At some time thereafter, around January 2012, the respondent again telephoned Mr Mazive and demanded that R100 000.00 be paid by Mr Mazive “for some other attorney’s costs”. Mr Mazive complied with this request and identified the deposit slip confirming this.

[32] Mr Mazive’s version requesting the deduction of R51 000.00 for advocates fees and the demand for another R100 000.00 remained consistent from his initial written complainant, his evidence at the disciplinary hearing and before us. The R51 000.00 formed part of the overreaching charge before the LPC, but the R100 000.00 was, after some haggling, not considered for purposes of conviction by the disciplinary committee. It did, however, form part of the dispute referred to oral evidence.

[33] The basis for the dispute, was that the respondent claimed that the R100 000.00 was paid to him by Mr Mazive as part of the purchase price of a bottle store.

[34] When confronted by this version, both in his evidence in chief and in cross-examination, Mr Mazive said that this version was news to him. He was a pastor and as such could not and in fact, did not own or operate any bottle store. He had never purchased a bottle store or part thereof from the respondent and had no participation in any liquor license for such an enterprise.

[35] This concluded the evidence the LPC produced on the referred issues.

[36] It must be pointed out that, during the preceding disciplinary hearing, it transpired that the respondent had repaid the R51 000.00 referred to in the above reconciliation and he conceded that the R51 000.00 would have been included in his contingency fee of 25%. It appeared that the party and party bill amounted to R119 348.61, which was eventually paid by the RAF and landed up in the hands of the sheriff. All agreed it was payable to Mr Mazive, but it is somewhat unclear whether he did in fact receive it in the end.

[37] The respondent then took the stand. On the disputed issue, he confirmed that he had met Mr Mazive in October 2011 to explain the abovementioned reconciliation to him. After a full explanation, Mr Mazive thanked him, saying he had done a good job and had saved Mr Mazive “from hunger”.

[38] During the course of the respondent’s evidence and cross-examination, the taxed party and party bill, the attorney and client bill, in the total amount of R343 423,79, were also canvassed.

[39] Neither of these two bills nor the amounts reflected therein featured in the reconciliation, but the respondent was adamant that they had featured in the discussion he had with Mr Mazive. Although the party and party bill had not been taxed at the time, he testified that he explained to Mr Mazive that the proceeds thereof would still be recovered from the RAF in due course.

[40] The total fees contained in the attorney and client bill amounted to R168 492.00. To this was added an arbitrary 30% in the amount of R50 547.60 as a “surcharge”. The respondent could not explain why or furnish any legal basis for this, but testified that it was “customary” to do so. The disbursements totaling R93 718.65 included advocates fees of R51 000.00.

[41] If only the fees of R168 492.00 were doubled as a success fee, amounting to R336 984.00 then there could be some basis for limiting it to the 25% amount mentioned in the reconciliation to Mr Mazive, but none of this or the other amounts reflected in the attorney and client bill, feature there.

[42] To meet this difficulty, the respondent gave differing and conflicting versions. These ranged from the respondent immediately after finalization of the matter handing his file to the tax consultant, Mr Lebo Chaza, to later retrieving the file to discuss the bill with Mr Mazive, to only having a “skeleton file” during the discussion. The versions relating to whether the party and party bill had by then been drafted but not yet taxed, to the version whether only the attorney and client bill had been drawn, and been ready for discussion or not, also underwent various permutations during cross-examination. The only aspect which was undisputed, was that only the reconciliation had been signed by Mr Mazive (and someone on behalf of Freeman Dube Inc) and no other account or reconciliation.

[43] In respect of the R100 000.00 issue, the respondent’s version was the following: Mr Mazive lived in the area where the respondent operated a bottle store. One day, shortly after Mr Mazive had been paid out his RAF claim, he and another erstwhile client of the respondent approached him, wanting to buy shares in the business, the respondent turned down the offer. He had other businesses and was not fond of partnerships. From time to time Mr Mazive and the other person urged the respondent to reconsider. At the time the bottle store was managed by the respondent’s sister and when she secured a “job” at the South

African Police Service, starting end January 2012, he considered that the needed a trustworthy person. He weighed up his options, including the fact that the distance of 45km from where he was either staying or working and then entertained the thought of “selling” the bottle store to them.

[44] As a result of his sister leaving, the respondent “announced to them” that he was prepared to sell the bottle store, rather than merely selling shares. Mr Mazive and the other person put their heads together and asked for “an offer” (presumably a selling price) which the respondent gave to them. He then went on to explain his motivation for selling and pointed out the assets and the values thereof. Although the purchasers would “team up”, Mr Mazive’s money was held up in a 30-day instrument. Mr Mazive then asked the other person to make the first payment and then Mr Mazive would make a second payment of R100 000.00.

[45] After Mr Mazive’s payment, a stock-take would take place and the purchasers would be orientated about the business. For this purpose, the respondent introduced the purchasers to his sister, Mbali. The sister agreed and this resulted in a “legal and formal coming together”. That was the respondent’s last day at the bottle store.

[46] The above narrative was given by the respondent in his evidence in chief by way of a solo narrative, uninterrupted by questions. When Adv Mokotedi SC asked, “Anything else?” at the end of the narrative, the respondent responded that there was “a particular young man living in the vicinity” who was unemployed at the time, who would have assisted in bottle store.

[47] We noted an objection at the end of this part of the narrative, to the effect that little of the above version was put to Mr Mazive in cross-examination. What was put was limited to the payment of R100 000.00 as part of purchase of the

bottle store, the assistance of Mr Mbali Masondo, the respondent's sister and that Mr Mazive and Ms Masondo had counted the bottles in the bottle store.

[48] We shall deal with the evaluation of this evidence at the conclusion of this judgment.

[49] The next witness was Ms Mbali Masondo. Her evidence was rather brief. She was a police officer and had been in the South African Police Service since the commencement of her training on 28 January 2012.

[50] Ms Masondo had indeed worked in the respondent's bottle store before becoming a police officer, as the manager thereof, "taking care of everything". She was vague about the location of the bottle store though, and was equally vague about two persons, who the respondent had told her would be purchasers.

[51] Ms Masondo did remember though that the one person was on crutches and the other was in a wheelchair. She remembered the name of the one on crutches as Mr Carlos Mazive. During January 2012 she gave this person training and showed him the ropes. She could not remember the other person, but Mr Mazive came there "frequently" during January 2012 before Ms Masondo left to take up employment in the SAPS.

[52] Ms Masondo is not the respondent's actual sister, but "like a sister" as his mother and Ms Masondo's mother are sisters. This was as far as her evidence went.

[53] The next and last witness was Mr Sandile Mbatha. He is currently a metro Police Officer in Ekurhuleni. He started his evidence very hesitantly and constantly had to be prodded and prompted.

[54] Mr Mbatha testified that the respondent had been his employer “a long time ago”. His duties during his employment was stocktaking at the bottle store as well as the purchasing and replenishment of stock.

[55] Once the respondent “handed over” the bottle store to another person, he ceased being an employee of the respondent. He was uncertain as to when this happened, both as to the specific month and even the year. He remembered the person as one Carlos, but could not remember the surname. After the takeover, Mr Mbatha worked for Carlos until about July of the takeover year.

[56] An attempt was made by counsel to have Mr Mbatha identify Mr Mazive by his observance as the first witness when he went into and out of court while Mr Mbatha was sitting outside. Despite him having been outside court, Mr Mbatha testified that he had seen Mr Mazive enter the witness stand and leave it again after giving evidence.

[57] That concluded the oral evidence.

[58] The LPC also relied on the contents of the two supplementary founding affidavits. These disclosed complaints by thirteen of the respondent’s clients. The contents and nature of the complaints have been summarised in the said affidavits and heads of argument delivered on behalf of the LPC. As these facts have not been controverted, they can be referred to in summary fashion.

[59] First complaint: Mr Mabaso

Mr Mabaso had instructed the respondent to pursue a claim against the RAF. On 22 January 2021 the court granted the claim, the capital portion of which was R2 194 416.25. Despite this, Mr Mabaso had last heard from the respondent in 2019. When Mr Mabaso eventually obtained a copy of the order, it reflected that the

order had been the result of a settlement. Mr Mabaso never authorized nor knew of such a settlement. He had also, at the time of his complaint on 17 March 2022, not been paid.

[60] Second Complaint: Adv Rakgetsi

Adv Rakgetsi is a legal practitioner of this court, practicing as an advocate. She had received two briefs from the respondent during March 2020. The first brief, for a Ms Kunene as client was finalized on 10 March 2020 and the second, for a Ms Nxumalo as client, was finalized on 13 March 2020. Despite demands at the time of her complaint on 24 February 2022 Adv Rakgetsi had not been paid in respect of her respective invoices of R1 800.00 and R19 200.00.

[61] Third Complaint: Adv Thabede

Adv Thabede is similarly a legal practitioner of this court, also practicing as an advocate. He was owed an amount of R1.4 million in respect of fees earned on brief for the respondent during the period from February 2017 to July 2019.

[62] Fourth complaint: Ms Nyoka

The complaint submitted by attorneys BB Khumalo on behalf of Ms Nyoka on 28 April 2022 was to the effect that the respondent has visited her at her home “to assist” her with a claim against the RAF. He had introduced himself as Freeman Dube from Freeman Dube Attorneys. This was after the expiry of two years additional prohibition from practicing for his own account after his previous suspension⁵, but before a formal lifting of his suspension and without the knowledge of the LPC. The respondent had arranged for medico-legal assessment of Ms Nyoka during August 2020 and, upon her enquiry, she was told

⁵ Detailed more fully in par 74 hereunder.

by the respondent's staff in February 2021 that "the firm" was awaiting payment from RAF. Ms Nyoka subsequently made six further enquiries, up to February 2022, all unsuccessful. After engaging a new attorney, she found out that her claim had been paid out by the RAF in the amount of R2 350 574.00 at the end of 2020 already. The respondent, curiously, on 16 March 2022, undertook to make only an interim payment. He, however, defaulted on this promise.

[63] Fifth complaint: Mr Khumalo

In similar fashion as in the previous complaint, the respondent had instituted action on behalf of Mr Khumalo, while acting for his own account in 2014, while still being prohibited from doing so. Despite this, the action instituted on behalf of Mr Khumalo against the RAF was successful and R2 926 188.20 was paid out on 29 July 2021. Despite this, the respondent only made piecemeal payments to Mr Khumalo, who only found out on 15 August 2023 that the full payment had been made by the RAF. Up to that time, the piecemeal payments only amounted to R286 000.00. Pursuant to an urgent application launched for payment by Mr Khumalo, the amount of R1 659 188.00 was paid by agreement. The further agreement to render a bill of costs by 19 November 2023, embodied in the settlement order, has to date been ignored by the respondent.

[64] Sixth complaint: Ms Khubeka

During the respondent's period of suspension, he undertook to institute a personal injury claim on behalf of Ms Khubeka against the RAF. This matter had become settled during September 2020 in an amount of R1.2 million. Ms Khubeka found out from the RAF that this amount had been paid to the respondent, when he did not account to her. Thereafter he started making piecemeal payments, amounting to only R450 000.00. In her complaint to the LPC dated 18 July 2023, she stated

“I advised the attorney that I would institute legal action against him, and he responded by stating this would lead to a further delay in the release of my funds”.

[65] Seventh complaint: Ms Mdimma

Ms Mdimma’s complaint was that, despite having instructed the respondent to pursue a claim on her behalf against the RAF in 2018 and despite having thereafter arranged for medico-legal appointments in 2022, the respondent had failed to perform his mandate. She had to resort to new attorney thereafter.

[66] Eighth complaint Ms Gininda

Ms Gininda appointed the respondent in 2019 to pursue a claim against the RAF on her behalf and failed to advise her of any progress of her matter.

[67] Ninth complaint: Ms Jeje on behalf of a minor

This matter similarly involved an action against the RAF, but this time on behalf of a minor. The matter was settled in January 2019 in an amount of R2 932 947.80. Of this, R100 000.00 was to be paid directly to the minor’s guardian and the balance to a trust to be created. The RAF paid the full amount to the respondent in February 2019, but the client only found out about this from the RAF. Thereafter the respondent paid the aforementioned R100 000.00 on 13 December 2019. Despite the trust having since been created, as of 12 September 2020, no funds had been paid to it by the respondent.

[68] Tenth complaint: Ms Mdaki

This was another matter which involved a claim against the RAF on behalf of a minor. Instructions had been given to the respondent during February 2013 and the matter was finally finalized during April 2018. An amount of R5 312 560.14

was recovered by the respondent via the Sheriff, Pretoria East, but nothing has yet been paid to the client or the minor, who had since attained the age of majority in November 2018.

[69] Eleventh complaint: Mr Mdlalose

Mr Mdlalose had instructed the respondent in 2013 to pursue a claim on his behalf against the RAF. That claim was finalized in September 2018 and the proceeds were paid to the respondent. After having heard nothing from the respondent, despite enquiries, Mr Mdlalose instructed new attorneys to lodge a claim against the Legal Practitioners Fidelity Fund (LPFF) as the proceeds of the claim are feared to have been misappropriated. According to Mr Mdlalose's claim documents, the net amount due to him is R558 815.36.

[70] The twelfth complaint: Ms Shezi

This is yet another matter where a claim had been instituted against the RAF on behalf of a minor. Court documents indicate that the respondent had settled the claim for general damages on 1 November 2017 in an amount of R450 000.00, with the remainder of the claim postponed sine die. R50 000.00 would have been paid to the minor's mother and the balance in a trust to be created. When the client, through her new attorneys found out that no monies had been paid into the trust's bank account, the respondent's mandate was terminated on 29 May 2019. Despite this, and without authority, the respondent thereafter settled the loss of earnings claim on 10 June 2019 in an amount of R2 021 064.50.

[71] The thirteenth complaint: Mr Sithole

In this letter of complaint to the KwaZulu-Natal office of the LPC on 1 September 2023 Mr Sithole complains that the respondent had been instructed in 2018 to

proceed with a claim against the RAF for the complainant's brother. The brother, however passed away in 2019. The respondent's office obtained the brother's death certificate from his mother and in May 2023 informed the complainant that the claim had already been "processed". To date, neither payment nor any further response had been received from the respondent.

[72] Fidelity Fund Certificates

The LPC confirmed that the respondent had been practicing without a Fidelity Fund certificate for the years 2015, 2016, 2021, 2022, 2023, 2024 and to date.

The respondent's position

[73] The respondent had been admitted as an attorney in terms of the then applicable legislation⁶ on 12 January 2007.

[74] As already mentioned, the respondent has previously been suspended from practice by this court. The contraventions which formed the basis of the suspension were practicing without a Fidelity Fund Certificates, theft of client files as an employee of another attorney's firm, misappropriation of funds and claiming inflated fees. The suspension was for 1 year from 14 October 2011 and thereafter the respondent was prohibited from practicing for his own account for a further two years.

[75] In confirming this court's sanction of suspension (and the imposition of a limitation for a further two years from practicing for his own account), the Supreme Court of Appeal commented as follows⁷ "*The court below was very conscious that the respondent's conduct had brought him to the brink of striking off. In concluding he should not be pushed over the edge, it looked not at the*

⁶ The Attorneys Act 53 of 1979.

⁷ *Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA) at par 32.

individual offences but at their cumulative effect and it made a value judgment on the rehabilitation prospects of the respondent”.

The test to be applied

[76] It is trite that applications for the suspension or striking off of a legal practitioner involves a three-stage enquiry. The first stage is determining whether the alleged offending conduct had been established on a preponderance of probabilities. This is a factual enquiry. The second stage is to determine whether the practitioner is fit and proper to continue to practice. This is a discretionary exercise. The third stage is to determine whether, in the circumstances, a sanction should be imposed, whether an order of suspension from practice would suffice or whether the practitioner should be struck off⁸.

[77] At the preceding disciplinary hearing, the respondent had pleaded guilty to all charges. In his answering affidavit in the present matter, he sought to recant his pleas. In particular, in respect of the fees and disbursements charged from Mr Mazive, the respondent submitted an alternate calculation. This was primarily based on a consideration of the attorney and client and the party and party bills.

[78] Admittedly, the respondent did not have his erstwhile office file with him when he answered to the charges before the disciplinary committee and neither was he aware that the proceeds of the taxed bill of costs had been recovered via the sheriff. These issues impact on both the first and second stages referred to above.

[79] Alive to those facts, the court preceding ours, pointed out that the LPC’s application was neither an appeal nor a review of the findings of the disciplinary committee. On the disputed issues, the preceding court found as follows when it

⁸ *Law Society of the Northern Provinces v Magami* 2010 (1) SA 186 (SCA) at par 4 and *Summerly v Law Society of the Northern Provinces* 2006 (5) SA 613 (SCA) at par 2.

made the ruling referring the matter for the hearing of oral evidence: *“In my view the most important consideration in determining whether the respondent is a fit and proper person, relate to the Mazive complaint, and the bill of costs; the overreaching in respect of the R100 000.00 and his failure to disclose the Mazive’s case when his application to uplift his suspension was considered. These transgressions on their own are sufficient to have the respondent removed from the roll of practicing attorneys. However, through the proper exercise of the discretion entrusted on the court, certainty is required before such drastic action is taken. In considering an appropriate sanction, it is my view that the issues relating to disputes of fact require to be referred to oral evidence”*.

[80] The LPC took the views of the court to be that the offending conduct had been established and that the oral evidence which was required only related to sanction. It seems, with respect, that the preceding court had somewhat conflated the three stages as is evident from the quoted paragraph and this might have led to the LPC adopting the aforesaid stance. We were not convinced that this stance was correct or appropriate in the circumstances.

[81] There are two further aspects of importance, the first is that neither the determination of whether a practitioner is fit and proper and the determination of what sanction, including suspension or striking off, can be determined before the offending conduct has been established. If oral evidence is needed, as has been determined by the preceding court, then offending conduct can only be determined after factual findings have been made, which in turn could only be made after the hearing of such evidence as may be presented.

[82] The second aspect of importance, is that the ruling of the preceding court, did not limit the issue to be determined by a newly constituted court to be only that of sanctioning. The wording of the order is clear: *“the application to suspend or strike ... is referred to a freshly constituted bench”* (my underlining for

emphasis). This means that the whole matter brought to court by the LPC, is to be considered by us. Any other interpretation, namely that one court has partly determined the matter and that we, as a freshly constituted court, should determine the remainder of the same matter, in a piecemeal fashion, would be inappropriate to the extent of being absurd.

[83] In order not to unduly prejudice the respondent, we shall therefore, as directed, as a freshly constituted bench consider the matter in accordance with the three stages outlined before. We shall therefore consider the comments made by the preceding court as being obiter only and not otherwise rely thereon.

The offending conduct

[84] We find that the respondent had not properly accounted to Mr Mazive at the conclusion of the matter. The “account” given to him as quoted in paragraph 28 above, did not address the attorney and client fees and what allegedly entitled the respondent to 25% of the capital amount.

[85] In addition, the calculation does not properly indicate why a portion of the disbursements, the advocates fees in the amount of R51 000.00, had to be deducted.

[86] The “accounting” does not address the issue of the party and party costs, then still to be taxed and recovered at all.

[87] We find that the respondent’s oral evidence, without a smidgen of corroborative evidence, that he had by then already been in possession of the attorney and client bill and that he had taken it and either a skeleton or the full file (which he had given to the cost consultant) to the bottle store to which he had summoned Mr Mazive, not credible. The respondent’s contradictions in this regard, his prior versions and recalculation of actual fees, all done *ex post facto*,

confirm our impression that the “account” quoted in paragraph 28 above was all that was discussed with Mr Mazive.

[88] The above “account” and the manner in which the two bills and the disbursements had been handled, do not amount to proper accounting to a client by his attorney. Rule 35.11 read with Rule 40.7 of the Rules⁹ (corresponding with Rule 68.2 of the “old Rules”¹⁰) obliges an attorney to account to his client in writing (and to retain a copy of such account), which account shall contain details of:

“35.11.1 *all amounts received in connection with the matter concerned, appropriately explained;*

35.11.2 *all disbursements and other payments made ...;*

35.11.3 *all fees and other charges charged to or raised against the client;*

35.11.4 *the amount owing to or by the client ...”.*

[89] It is therefore clear that the offending conduct relating to a failure to properly account to Mr Mazive has been established on a balance of probabilities.

[90] In respect of the 30% surcharge which the respondent attempted to recover from Mr Mazive, this conduct breached Rule 49.6 which prohibits a practitioner from overreaching, by charging a fee which is “unreasonably high”, having regard to the circumstances of the matter. In the present circumstances the additional 30% was neither agreed to between the parties, nor was it justifiable. It was therefore “unreasonably high” and in breach of the Rules.

⁹ Rules for the Attorneys Profession, Gov Gazette 39740 of 26 February 2016.

¹⁰ Rules of the Law Society of the Northern Provinces, Government Gazette No 7164 of 1 August 1980.

[91] In view of the above, we find it unnecessary to consider the remainder of the respondents attempted ex-post facto recalculations of his fees. The offending conduct had already been established, and no subsequent justification would detract from those facts.

[92] As to the R100 000.00 demanded or paid, we note that Mr Mazive had testified in an open and straightforward manner. His version had remained consistent with his original complaint, through his evidence presented at the disciplinary hearing and in open court. We find no reason to doubt his credibility or his version.

[93] On the other hand, the respondent's version was vague in the extreme. It suffered from a lack of particularity relating to dates and times of the alleged negotiations for the purchase of the bottle store, the specific terms of the sale, the alleged total selling price, the itemization of the assets or stock purchased and all the other essentialia of a sale of that nature.

[94] The alleged sale had been criticized by the respondent's colleagues who sat as members of the preceding disciplinary committee, and he has since then not been able to meet that criticism. These aspects relate to his contention that it was the landlord, and not the owner and operator of the bottle store, who had to hold an off-sale liquor license and that he could with impunity and legally have the bottle store change hands without contravening liquor laws. He also failed to meet the criticism that it is highly improbable that, had the sale been a genuine one, an attorney would effect such a sale without the terms being embodied in a written contract or at the very least, somewhere being noted or reduced to writing.

[95] The evidence of the respondent also suffered from internal contradictions created by the various versions of the sale presented by him.

[96] We also have grave doubts about the veracity of the corroborating evidence. The evidence of Ms Mabatha, despite having purportedly identified Mr Mazive and describing the timing of the alleged sale, verified very little else. She appeared to have been called by the respondent to confirm an instruction to corroborate a sale to Mr Mazive and nothing more. That is the most probable explanation why she could not and did not provide any concrete details which one would otherwise have expected from the manager of such a lucrative business.

[97] Similarly, the purported corroboratory evidence of Mr Mabaso was equally vague, if not even more so.

[98] When weighing up the evidence and by having regard to the manner presented, the reliability of the evidence and the general probabilities¹¹, we find the version of Mr Mazive to be more credible and reject the version presented by the respondent.

[99] The result is that, in respect of the R100 000.00 offending conduct in contravention of Rule 49.6 has also been established.

[100] But even if we were to be wrong in our assessment of the oral evidence regarding the R100 000.00 issue and even if that were to be ignored as offending conduct, then the evidence presented by the LPC in the supplementary affidavits in the discharge of its obligations, put the issue beyond any doubt.

[101] In addition to the obligation to account to clients, the respondent had the obligation to pay the proceeds of claims received into his trust account within a reasonable time to the respective clients (Rule 35.12)¹² and to pay other legal

¹¹ As set out in *SFW Group & Ano v Martell et Cie & Others* 2003 (1) SA 11 (SCA) at par 3.

¹² See also *Incorporated Law Society, Transvaal v Visse* 1958 (4) SA 115 (T) at 131 A-C

practitioners, timeously (Rule 18.18). This was not done in respect of the first twelve complaints, thereby establishing offending conduct.

[102] A basic requirement of the discharge of a legal practitioner's duties is to perform his duties in accordance with his mandate and with such degree of skill as may reasonably be expected (Rule 49.13). In respect of complaints one and twelve, the respondent settled matters without a mandate or after his mandate had been terminated. In respect of complaints seven, eight, nine, eleven and thirteen, the mandates have either not been discharged at all or only belatedly so.

[103] There had, in similar fashion as with Mr Mazive not been proper accounting to the clients in respect of complaints one, four, five, six, nine, ten and twelve and, in most instances, even more egregiously so by failing to account at all.

[104] In respect of complaint four, clear touting has been established, constituting a contravention of Rule 49.17¹³.

[105] There are further transgressions, which are more minor when compared to those described above, such as failure to respond to the LPC's queries (Rule 47.2).

[106] There is no dispute before us that the "old Rules" have been supplanted by the "new Rules", which have in turn been supplemented by the Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities¹⁴ (the Code).

[107] The respondent's attitude to the magnitude and seriousness of the complaints set out in the supplementary affidavits was a curious one. Despite

¹³ See also the court's attitude toward touting as set out in *Cirota v Law Society of the Transvaal* 1979 (1) SA 172 (A) and *A Malan & F Malan v Law Society of the Northern Provinces* 2009 (1) SA 216.

¹⁴ Published in GN 168 in Government Gazette 42337 of 29 March 2019.

having been urged by the LPC to respond to those accusations, he chose to simply ignore them. This is not the first time the respondent has done so. He did the same in respect of the allegations which had led to his previous suspension¹⁵.

[108] The respondent is not a lay person. He is an officer of this court. He had a duty to assist the court¹⁶. He also had the experience of legal proceedings of this nature brought against him, both in this court and in the Supreme Court of Appeal. In these circumstances, the belated argument proffered on his behalf in response to the LPC's argument at the conclusion of the matter (and after this Court has given him and his counsel a further two days' time to reflect and prepare) that the LPC had needed condonation or leave for the delivery of the supplementary affidavits and that, until that was granted, the contents could be ignored with impunity, must be rejected as being opportunistic and without foundation.

Fit and proper

[109] Having determined that numerous instances of serious offending conduct had been established, it is necessary to consider whether the respondent is still fit and proper to practice law in South Africa.

[110] As noted by the Supreme Court of Appeal, this Court has previously found during the previous application against the respondent, that he had been "naïve, immature, lacked experience and insight"¹⁷. That had been fourteen years ago. The respondent can no longer claim these mitigatory benefits.

[111] In addition to the above, the respondent appears to have not benefitted from the rehabilitative opportunities presented to him by his previous suspension. He

¹⁵ *Law Society of the Northern Provinces v Dube* (Supra) at par 13

¹⁶ *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853G-H.

¹⁷ *Law Society of the Northern Provinces v Dube* (supra) at par 14.

has committed numerous and, in many instances, more serious transgressions than before.

[112] To this must be added the repeated offences of continuing to practice without a Fidelity Fund Certificate¹⁸.

[113] In reaching a conclusion, a court should not look at the instances of offending conduct individually, but form a cumulative and wholistic view¹⁹. In doing so, we find that the respondent is no longer a fit and proper person to be a legal practitioner.

Sanction

[114] Although it is often axiomatic that a conclusion reached as above would lead to the striking off of a practitioner, a court should consider whether the sanction of suspension from practice would suffice to either protect the public or as a corrective measure.

[115] In the respondent's case, history has shown that a suspension order is no longer an appropriate measure. Numerous members of the public who had the misfortune to become clients of the respondent have suffered harm, either in how their cases had been handled or by way of actual losses of literally millions of Rands. Such conduct by a legal practitioner cannot be countenanced.

[116] This court would be failing in its duty if it did not find that the respondent no longer deserves to be an officer of this court. His conduct persistently fell short of that required by the LPA and the Code, he should be struck off.

¹⁸ Section 84(1) obliges a practitioner not to practice without a Fidelity Fund Certificate and, in terms of section 93(8) of the LPA, if he does so, he commits a criminal offence, punishable with a fine or imprisonment not exceeding two years.

¹⁹ *Law Society of the Cape of Good Hope v Segall* 1975 (1) SA 95 (C) at 99B.

Costs

[117] The LPC does not approach the Court as an ordinary litigant, but in the discharge of a public duty. Apart from the general rule that costs should follow the event, the LPC should therefore generally be entitled to its costs. As to the scale of costs, having regard to the subject matter of this litigation and the offending conduct of the respondent as well as the manner in which he had conducted this litigation as an officer of the court, we are of the view that a punitive costs order is justified.

Order

[118] In the premises, an order is granted in the following terms:

1. The respondent, Simphiwe Freeman Dube is struck from the roll of legal practitioners of this Court.
2. The respondent is ordered to immediately surrender and deliver to the Registrar of his previous certificate of enrolment as an attorney of this Court.
3. In the event of the respondent failing to comply with the terms of paragraph 2 above within one week from the date of service of this order, the sheriff of the relevant district is authorised and directed to take possession of the certificate and hand it to the Registrar.
4. The respondent is prohibited from handling or operating on the trust accounts as detailed in paragraph 5 hereof, from date of service of this order.
5. Ignatius Wilhelm Briel, the Director of the Gauteng Provincial Office of the applicant, is 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 respondent's practice as legal practitioner 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) & (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-section 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:

- 5.1 Immediately to take possession of the respondent's 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 was acting at the date of this order.
- 5.2 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 respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s).

- 5.3 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, 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.
- 5.4 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 claim in respect of monies in the trust account(s) of the respondent and, if so, the amount of such claim.
- 5.5 To admit or reject, in whole or in part, subject to the approval of the 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.

- 5.6 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.
- 5.7 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 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 or the respondent, 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 respondent to the Legal Practice Council, 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 respondent, if he is solvent, or, if the respondent is insolvent, to the trustee(s) if the respondent's insolvent estate.
- 5.8 In the event of there being insufficient trust monies in the trust banking account(s) of the respondent, 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.

- 5.9 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
 - 5.10 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 respondent has been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.
6. The respondent is immediately upon service upon him of this order, ordered to deliver the accounting records, files and documents containing particulars and information relating to the following to the *curator bonis*:
- 6.1 any monies received, held or paid by the respondent for or on account of any person while practising as a legal practitioner;
 - 6.2 any monies invested by the respondent in terms of section 86(3) and/or section 86(4) of Act No 28 of 2014;
 - 6.3 any interest on monies so invested which was paid over or credited to the respondent;

- 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the respondent whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5 any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 6.6 any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 6.7 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 respondent as or on behalf of the liquidator;
 - 6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the respondent as or on behalf of the liquidator.
7. Should the 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 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.

8. The curator shall be entitled to:

- 8.1 hand over to the person 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;
- 8.2 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 his 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;
- 8.3 publish this order or an abridge version thereof in any newspaper he considers appropriate; and 9.4 wind-up of the respondent's practice.

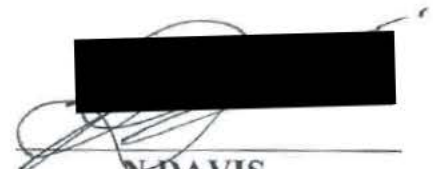
9. The respondent is hereby removed from the office as:

- 9.1 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, no 66 of 1965 or the estate of any other person referred to in section 72(1);

- 9.2 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;
 - 9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;
 - 9.4 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;
 - 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
 - 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and
 - 9.7 administrator appointed in terms of Section 74 of the Magistrate Court Act, No 32 of 1944.
10. If there are any trust funds available, 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 the respondent in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof.

11. 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.
12. The respondent is hereby ordered to:
 - 12.1 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 respondent;
 - 12.2 pay the reasonable fees of the auditor engaged by applicant;
 - 12.3 pay the reasonable fees and expenses of the curator, including traveling time.
13. The respondent is ordered to pay the applicant's costs of the application on an attorney and client scale.

I agree


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria


M LENYAI
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 13, 14, 17 and 19 March 2025

Judgment delivered: 15 April 2025

APPEARANCES:

For the Applicant:	Mr R Stocker together with Ms N Collett
Attorney for the Applicant:	Rooth & Wessels Inc., Pretoria

For the Respondent:	Adv K Mokotedi SC
Attorney for the Respondent:	VM Netshipale Attorneys c/o Dube (Freeman) Attorneys Inc., Pretoria