



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 24020/2024

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

MARI RENCKEN

Respondent

REASONS DELIVERED ON 14 FEBRUARY 2025

VAN ZYL AJ:

Introduction

1. On 17 January 2025 I granted an order in the following terms after considering Part A of a two-part application:
 - 1.1. The respondent's application to strike out is dismissed.
 - 1.2. Part A of the main application is dismissed.

1.3. Each party shall be liable for its or her own costs of suit.

2. These are the reasons for the order.

Background

3. The applicant (“the LPC”) is the body regulating the conduct of legal practitioners admitted to practice under the Legal Practice Act 28 of 2014. The respondent is a practicing attorney and conveyancer in Somerset West, having been admitted as an attorney in 2001 and as a conveyancer during 2007.
4. The LPC instituted an application for interim interdictory relief¹ (as Part A) pending the hearing of an application for final relief (as Part B) entailing the striking of the respondent’s name from the roll of legal practitioners. Part A sought an order that the respondent be suspended from her practice as a legal practitioner of this Court, and that a curator *bonis* be appointed to control and administer the respondent's trust account during the period of her suspension. The application was brought on the basis of two allegations, namely, first, that the respondent’s trust account was in debit on 16 September 2024, and, second, the respondent’s alleged misappropriation of trust funds from such account in the amount of R350 000,00.
5. The respondent, a sole practitioner, opposed the application.
6. The facts giving rise to these proceedings were, briefly, as follows. During April 2024 the respondent was instructed by Mr and Mrs Adonis to act as conveyancer and to transfer their property in Strand to Mr and Mrs Dlakadlaka, the property having been sold for the price of R350 000.00.
7. On 3 May 2024, pursuant to the sale, Mr Dlakadlaka paid R35 000,00 into the respondent’s trust account. On 13 September 2024 he made a further payment of R311 000,00. The transfer of the property was registered in the names of Mr

¹ Under sections 43 and 89 of the Legal Practice Act, read with the relevant regulations promulgated under section 109 of the Act.

and Mrs Dlakadlaka on 16 September 2024.

8. The respondent failed to pay the purchase price of R350 000,00 to Mr and Mrs Adonis on transfer of the property. This caused the Adonisse to make various requests for payment, culminating in a request from their daughter, who addressed whatsapp correspondence to the respondent enquiring about the payment of the purchase price. In a further attempt to receive payment, Mr and Mrs Adonis instructed an attorney who addressed correspondence to the respondent on 26 September 2024 and 16 October 2024. The respondent failed to make payment, despite these demands.
9. On 3 October 2024 the LPC received a formal complaint from Mr and Mrs Adonis. which resulted in the institution of these proceedings.

The trust debit

10. The LPC argues that there are various inconsistencies in the respondent's explanation, and that her version changed in the various supplementary answering affidavits delivered. I do not intend to go into the details of these inconsistencies, which are admittedly present. They appear to be the result of an increasingly better consideration of the available documentation over the course of preparation for the hearing and the gathering of more information. What it comes down to is that it appears, as the LPC argued, that the respondent did not treat separate clients' funds separately. Instead, she treated the funds in her trust account as a composite whole from which she debited as and when required.
11. Essentially, the respondent's explanation – viewed holistically upon a consideration of all of the affidavits - boils down to the following. The respondent admits that her trust bank account was in debit on 16 September 2024 in the amount of R170 012,00 after the payment of transfer duty in a property transfer matter to the South African Revenue Service ("SARS") on that day.
12. The debit lasted, however, only until funds paid into the trust account on the

previous day, 15 September 2024, were credited to the account on 16 September 2024. The bank at which the trust account is held, First National Bank (“FNB”), has despite numerous queries from the respondent not been able to explain the delay. It has therefore referred the matter to the online banking department to explain why the payments made on 15 September 2024 (and which were shown in the respondent's account on that day) were only allocated after the payment of the transfer duty made to SARS on 16 September 2024.

13. It appears from the papers that the respondent did not foresee a debit in her trust account. The immediate transfers into the account reflected on 15 September 2024 as having been received, and the respondent thought that the money was there. They were, however, only in reverse allocated on 16 September 2024 after the respondent had paid transfer duty to SARS. This caused the debit. The business manager of the FNB branch in Somerset West could not explain why this occurred, and referred the matter to the FNB online banking department for investigation. Unfortunately, the FNB head office and its legal department have not yet provided a report.
14. An issue that was pointed out in the replying affidavit is the fact that the name of the respondent's husband, instead of the respondent, appears on the bank notification of payment of R350 000,00 to Mr Adonis. Although this did not form part of the case made out in the founding affidavit, the respondent addressed this aspect in a supplementary answering affidavit. She indicating that she had raised the issue with FNB, who has not yet explained the error. This respondent's husband is not involved in her practice. The respondent denies that the inclusion of her husband's name on this documentation was her doing – it appears to have been a glitch at FNB. This has also been referred to the online banking and client services departments, who are yet to provide answers.

The alleged misappropriation of R350 000,00

15. After receipt of the Adonisse's query, the respondent investigated the situation and discovered that three payments made to another client, Mr Jacobs, on 23 August 2024, 2 September 2024, and 4 September 2024 from her trust account

in the total amount of R350 000.00 had been made in error. The respondent was doing work for Mr Jacobs at the time and thought, in error, that R350 000,00 of the funds that had come into her trust account was in respect of his transaction and thus owing to him. Mr Jacobs confirmed the fact of the incorrect payments under oath, and confirmed further that he had reimbursed the respondent on 31 October 2024 after the she had made several requests to him.

16. On 1 November 2024 the respondent paid the full amount of R350 000,00 from her trust account to Mr and Mrs Adonis, which resulted in the finalization of their matter.
17. According to the Oxford Advanced Learner's Dictionary, misappropriation means "*taking someone else's property or money for oneself, especially when they have trusted you to take care of it*". This is not what happened in the present case. I accept that the respondent committed an error (a rather negligent one) in informing Mr Jacobs of the availability of funds and inaccurately disbursing payments to him. There is no indication that she appropriated any funds for personal gain or any other purpose. Mr Jacobs subsequently confirmed the mistake, and reimbursed the respondent. The reimbursed funds were forthwith paid over Mr and Mrs Adonis. Neither the respondent nor any other person benefited from these events, and there was no eventual substantial loss to any client or party.
18. This matter does not involve a misappropriation of trust funds in the true sense. The money paid to the respondent ended up where it should have been. The problem is how she accounted for the movement of the money. There is no suggestion of theft.
19. It is unfortunate that the error was rectified only about one and a half months after the Adonis transfer had been registered. The respondent clearly should have communicated the situation to the Adonisse immediately upon discovery of her error. It appears from the papers that she did attempt repeatedly to obtain repayment from Mr Jacobs, who eventually reimbursed her only on 31 October 2024. I get the impression that the respondent inadvisedly waited for a response

from Mr Jacobs before she confronted the problem by interacting with the Adonisse. Perhaps she felt embarrassed at the time. Whatever the explanation, this is not a satisfactory situation. In addition, the internal administration by FNB of the trust account over that time should be investigated, as well as the fact that the respondent made erroneous payments to Mr Jacobs and did not pay the requisite attention to the proper administration of her trust account.

20. I think that the respondent has explaining to do as regards the administration of her trust account (and in this respect she is to act diligently and promptly in relation to requests from the LPC for information), as well as to the fact that she did not respond promptly to the Adonisse when they queried the non-receipt of their funds. It is not acceptable that they were compelled to instruct an attorney and address a complaint to the LPC before they received an explanation. The respondent further needs to provide the LPC with a detailed reconciliation of her trust account for the period in which the events complained of in the founding papers occurred, in particular April 2024 to November 2024.
21. I agree wholeheartedly with the LPC that the legal profession is, and should be seen to be, an honourable profession that demands high ethical standards, including complete honesty and integrity, from its members.² Yet, I do not regard an interdict of the drastic nature sought by the LPC as warranted at this stage without a fuller picture of the respondent's trust account affairs. Unlike in a standard case of theft or another plainly unlawful misappropriation, it is not clear to me, even of a *prima facie* basis, that such misconduct as appears from the papers would eventually warrant the striking-off of the respondent's name from the roll of attorneys.
22. The respondent still faces disciplinary sanction, up to and perhaps including an order that she be struck off. There is a need, however, to explore her conduct so as to determine her level of culpability, and ultimately to formulate the appropriate sanction. Chapter 4 of the Legal Practice Act arms the LPC with a variety of statutory powers to investigate and discipline legal practitioners, and to determine

² See, for example, *Swartzberg v Law Society of Northern Provinces* 2008 (5) SA 322 (SCA) at para [18].

the extent of their culpability. Section 37(3)(a) of the Act, for example, authorises the LPC to establish a disciplinary committee to oversee “*misconduct proceedings*” if “*prima facie evidence*” of misconduct is found. It has been held that where the material facts underlying any allegation of misconduct that may lead to striking-off (or, as in the present case, a suspension) are contested or obscure, the exercise of these powers will normally be a necessary step before approaching the court.³ This will, of course, depend upon the facts of each case.

23. The respondent in the present matter argues that the LPC should have engaged these statutory powers before seeking her suspension on the stringent terms sought. From the papers it appears that there was one attempt from the LPC to call and speak to the respondent. The respondent could not take the call at the time because she was being admitted to hospital after a suspected heart attack. The rest of the communication between the parties was by way of written correspondence. There was not yet any serious attempt to meet and discuss the situation in a constructive manner, and in particular to discuss the relevant course of events in detail at the hand of the available records. On a consideration of the particular facts of this case, I agree with the respondent’s submission. The LPC has adequate powers to refer what it regards as *prima facie* misconduct to a disciplinary committee, which may then recommend that the LPC seek striking-off relief after a full hearing. From the facts currently on record there does not appear to be a risk to the public in the respondent’s continued administration of her trust account to the extent that her suspension from practice is warranted.
24. In all of these circumstances, and in the exercise of my discretion, I was of the view that the interim interdictory relief sought should not be granted.⁴ There are too many unanswered questions that could have been and can be dealt with between the parties, and a concerted effort needs to be made by both of them to discuss the matter in a constructive manner, which could of course include the appropriate disciplinary procedures.

³ *Legal Practice Council v Louw and others* 2025 (1) SA 447 (GJ) at para [12].

⁴ *Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 399A.

The striking-out application

25. The respondent complained that the applicant's supplementary replying affidavit contained matter that was new, and applied for such matter to be struck out.
26. On a consideration of the allegations in the replying affidavit, however, I was of the view that they constituted comment on the averments set out in the further supplementary answering affidavit, and did not serve to expand the ambit of the complaint set out in the founding affidavit. They also, in several instances, consisted of argument that was duly addressed by counsel in the course of the hearing. I did not regard these replies to have caused prejudice⁵ to the respondent, and accordingly refused the application to strike out.

Costs

27. As the LPC was litigating in an official capacity in the exercise of its duties and obligations under the Legal Practice Act, it should generally not be mulcted in costs.⁶ Whilst the respondent's striking-out application was dismissed, she was successful in the main application. In the circumstances, I thought it fair to direct that each party should pay their own costs of suit.

Order

28. I accordingly granted an order as set out in the introduction to these reasons.

VAN ZYL AJ

Appearances:

⁵ *University of the Free State v Afriforum* 2017 (4) SA 283 (SCA) at 296E-F.

⁶ See, for example, *Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA) para [33].

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