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

CASE NO: 43012/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 15 MAY 2025

SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

MAMOLATELO ALFRED SELOTA

Respondent

Summary: *Legal practitioner – striking off. After offending conduct had been established, the practitioner had been suspended from practice in 2020*

pending final determination of the matter. Despite that order, the practitioner committed further offending conduct. Cumulative effect rendering practitioner no longer fit to practice. The sanction of a striking off justified in the circumstances.

ORDER

1. The respondent, Mamolatelolo Alfred Selota 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 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 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:
- 12.1 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 respondent;
- 12.2 to pay the reasonable fees of the auditor engaged by applicant;
- 12.3 to 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.

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the

electronic file of this matter on Caselines. The date for hand-down is deemed to be 15 May 2025.

DAVIS, J (with KHUMALO J (Ms) concurring)

Introduction

[1] On 21 June 2018 a predecessor of the Legal Practice Council (the LPC), being in this case the Law Society of the Northern Provinces, (the LSNP) launched an application for the striking of the respondent's name from the roll of attorneys. By way of an interim order, this Court suspended the respondent from practice on 7 February 2020. The respondent, however continued to practice, which resulted in an application for contempt of court. The LPC, continuing with the original application, as supplemented over time, sought an order striking the respondent from the rolls of legal practitioners and the removal of his name from the roll of attorneys.

[2] The above facts and numerous attempts at appealing the suspension order, together with further allegations of offending conduct, resulted in a protracted litigation history of some seven years. All in all, more than 4 500 pages of affidavits and documents had to be traversed.

[3] At the hearing of this matter, the respondent employed Adv Mteto to present legal argument and raise certain points *in limine* on his behalf. Regarding the merits, the respondent conducted his own defence in person. This resulted in protracted and lengthy argument, sometimes interspersed with attempts at presenting inadmissible evidence from the bar, further rendering a hearing of this matter extremely difficult.

[4] We shall deal with all of the above as succinctly as possible, starting with the procedural history. Thereafter we shall deal with the points *in limine*, before proceeding with the evidence and the evaluation thereof.

Procedural history

[5] At all relevant times the respondent has practiced as the sole proprietor of an attorney's firm. The LSNP initially launched an urgent application on 21 June 2018, set down for hearing on Tuesday 17 July 2018. The principal bases relied on were that the respondent was practicing without a Fidelity Fund certificate and that his trust account was in deficit.

[6] The answering affidavit was delivered on Thursday 12 July 2018, giving the LSNP no time to reply in time for the papers to be ready for hearing. In addition, the respondent launched an application to strike certain parts of the founding papers. This was only done on 16 July 2018. Consequently the matter was struck off the urgent roll.

[7] On 7 December 2018 the LSNP, in terms of the transitional provisions contained in the Legal Practice Act¹, which had come into operation on 1 November 2018, delivered a supplementary founding affidavit as a result of further offending conduct of the respondent which had come to its notice. These included complaints by clients of the respondent received since the previous date of set-down.

[8] On 4 April 2019 the LPC delivered its replying affidavit.

[9] Hereafter the matter was set down for hearing on 21 November 2019. Shortly before the hearing, further applications in terms of Rule 6(5)(e) for the leave to file further affidavits were delivered by the respondent on 28 October 2019 and 20 November 2019.

[10] On 7 February 2020 Rabie J and Avvakoumides AJ ruled that, once the further affidavits were allowed, the LPC should be afforded the opportunity to respond thereto. The matter was as a result thereof postponed but, in the meantime the respondent was suspended from practice and a *curator bonis* was appointed to take charge of his practice.

¹ 28 of 2015.

[11] The respondent thereafter lodged an application on 11 February 2020 for leave to appeal his suspension and continued to practice. He also alleged that he did not understand the person tasked with the execution of the suspension order to actually take over his practice or to hand it over to the curator after service thereof by the sheriff especially since the lodged application for leave to appeal was pending.

[12] The application for leave to appeal was dismissed with costs on the scale as between attorney and client on 17 April 2020. The respondent's subsequent petition to the Supreme Court of Appeal was dismissed on 24 July 2010 and his application for reconsideration was refused by the President of that court on 1 October 2020. A subsequent application for leave to appeal was similarly dismissed by the Constitutional Court on 10 February 2021. The respondent then interpreted Rule 11(1) of that court's rules to the effect that he was entitled to a reconsideration of that refusal. His purported application in this regard was also refused on 31 March 2021.

[13] In the meantime and pursuant to the further answering affidavits delivered as mentioned in paragraph 10 above, the LPC had delivered supplementary affidavits on 20 February 2020.

[14] Yet again, the respondent on 25 March 2022 launched an application in terms of Rule 6 (15) to strike out parts of the LPC's affidavits.

[15] On 1 June 2020, pursuant to further complaints, the LPC delivered a second supplementary founding affidavit, to which the respondent delivered his answer on 28 September 2020. The LPC replied by 5 October 2020 and the matter was set down for hearing on 12 November 2020.

[16] Again, shortly before the hearing, the respondent took a further step. This was in the form of a *subpoena duces tecum*, delivered on 3 November 2020. A further application was also delivered on 6 November 2020 in terms of Rule 6(5)(e). This prompted the LPC to deliver a notice of an irregular step in terms of Rule 30A on 10 November 2020. The result was that the matter was postponed *sine die* on 12 November 2020 with costs reserved.

[17] Subsequent to the exchange of yet a further supplementary founding affidavit on 22 April 2021, a supplementary answering affidavit on 11 May 2021 and a third supplementary founding affidavit on 14 May 2021, a supplementary answering affidavit was delivered on 17 May 2021. As a consequence, the matter was yet again postponed on 20 May 2021. This was done by Van der Westhuizen and Strydom JJ, with the former volunteering to case-manage the matter.

[18] At a case management meeting held before Van der Westhuizen J on 9 June 2021, at which the respondent was represented by a senior counsel, the idea was floated that the matter might have to be referred for the hearing of oral evidence. Pursuant to this, an application in terms of Rule 6(5)(g) and further affidavits were exchanged on 18 June 2021 (by the respondent), 9 July 2021 (the LPC) and 28 July 2021 (the respondent).

[19] The LPC also subsequently brought allegations of yet further misconduct on the part of the respondent to the court's attention by way of supplementary affidavits delivered on 21 July 2021 and 13 September 2022.

[20] An application for discovery in terms of Rule 35(12) was made by the respondent on 6 April 2023 and responded to by the LPC on 9 April 2023.

[21] In May 2023, an application for the substitution of the curator was launched. This was opposed by the respondent.

[22] Pursuant to further case management, this time by Van der Schyff, J on 14 June 2023, yet further affidavits were exchanged. This involved late answering affidavits by the respondent (together with an application for condonation) in response to the LPC's supplementary founding affidavits. These answering affidavits were delivered on 21 July 2023 and replied to by 23 August 2023.

[23] On 5 December 2023 the application for the substitution of the *curator bonis* was granted.

[24] On 25 September 2023 Makhoba J granted a judgment in respect of the application for a finding of contempt of court due to the fact that the respondent had continued practicing despite having been suspended. The respondent was found to have been in contempt of the order of 7 February 2020 and sentenced to 12 months imprisonment, suspended for 3 months on condition that the suspension order be complied with. This involved the handing over of all the files of the respondent's practice.

[25] After leave to appeal the above order has been refused, the respondent petitioned the Supreme Court of Appeal on 18 November 2024. This petition was ultimately unsuccessful.

[26] The matter was thereafter initially set down for hearing on 1 August 2024 before it eventually came before us on 19 and 20 November 2024.

[27] In the meantime, the respondent also featured in two matters in the Johannesburg seat of this Division regarding the dismissal of two of his employees. We shall deal with the contents of the judgment in respect of these matters during the evaluation of the respondent's conduct later.

[28] Following the approach adopted during the case management meetings and, in order to provide as full as possible ventilation of all the issues, all the affidavits filed of record, including those in respect of which condonation had been sought due to the late delivery of such affidavits, were accepted by us. There can therefore be no room for argument that the respondent had not been fully accommodated in giving his versions of events.

The points *in limine*

[29] Adv Mteto had been briefed by the respondent to raise a number of points *in limine*. In the heads of argument, the respondent objected to the LPC having delivered supplementary affidavits from time to time, accusing them of moving the goal posts. He also objected to the matter having proceeded to court without a prior disciplinary hearing having been held. It was also argued that there were irresolvable

disputes of fact which could only be resolved by the hearing of oral evidence. In addition, Adv Mteto in oral argument sought to attack the contempt of court finding as well as an ancillary judgment granted against the respondent in the Labour Court. We shall deal with these points as succinctly as possible hereunder.

The supplementary affidavits delivered by the LSNP and the LPC

[30] The respondent's objection to the delivery of the supplementary affidavits is unfounded. The LPC and its predecessor, due to its oversight role of the legal profession, were obliged to place further evidence of possible misconduct by a legal practitioner before the Court. Due to the *sui generis* nature of the proceedings, no leave or condonation for the delivery of such affidavits evincing possible misconduct, was necessary².

A prior disciplinary hearing?

[31] The Supreme Court of Appeal had settled this question in respect of one of the LPC's predecessor in *Law Society of the Northern Provinces v Morobadi*³ as follows: "*in general it is correct that the Council may proceed with the application for the striking off of the practitioner or for his or her suspension without pursuing a formal charge before a disciplinary committee if, in its opinion, having regard to the nature of the charges, a practitioner is no longer considered to be a fit and proper person*".

[32] This principle has also recently found application in LPC applications of this nature⁴. This point *in limine* therefore also has no merit.

The contempt of court finding

[33] The point *in limine* regarding this issue was dilatory in nature. It was to the effect that the respondent's alleged contempt for this court cannot be considered as

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

³ (1151/2017) [2018] ZASCA 185 (11 December 2018) at par [25].

⁴ See *SALPC v Berkowitz* (35116/2022) [2024] ZAGPPHC 836 (15 August 2024) at paras [15] – [18].

an element of misconduct, while the judgment whereby he had been found in contempt was still the subject of an appeal. The facts regarding the status of the judgment is that Makhoba J had granted the contempt order on 24 September 2024 and refused leave to appeal on 4 November 2024. A day before the matter currently under consideration came before us, a petition for the requisite leave was delivered at the registrar of the Supreme Court of Appeal.

[34] Irrespective of whether the actual order sanctioning the respondent's contempt of court is suspended or not, the LPC relied on the actual conduct of the respondent. It is found that the dilatory point therefore finds no application. We will consider the actual conduct hereinlater.

Factual dispute?

[35] The LPC argued that there were sufficient common cause facts or facts to which the respondent has offered no controverting facts so as to create a "real"⁵ factual dispute, that the question of whether offending conduct had been established or not, can be decided without reverting to oral evidence. As will be indicated hereunder, we are of the view that the LPC is correct and that this "point" should not be acceded to.

The test

[36] Before proceeding with the evaluation of the evidence, it is apposite to remind the parties and the readers of this judgment of the applicable test by which the evidence and the respondent's conduct are to be measured.

[37] 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

⁵ See *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 372 (SCA) at paras [11] – [13].

exercise. The third stage is to determine what sanction should be imposed and whether an order of suspension from practice would suffice or whether the practitioner should be struck off⁶.

The evidence regarding the alleged offending conduct

[38] The first aspect relating to offending conduct which stands uncontroverted on the papers, is the fact that the respondent has practised without a Fidelity Fund certificate for the following periods: 1 January 2017 to 7 March 2017, 1 January 2018 to 20 February 2018 and, more significantly, from 1 January 2019 to 13 April 2021.

[39] Not one of the above periods of time are disputed, but the respondent kept blaming other people and circumstances for his own failures. He even blamed the LPC for not having granted him “condonation” for not practicing without a Fidelity Fund certificate. There is no provision for such “condonation” in either the Legal Practice Act⁷ (the LPA) or the preceding legislation.

[40] Section 84(1) of the LPA is peremptory in this regard. Moreover, practising without a Fidelity Fund certificate, places trust creditors and members of the public at risk. Practicing without a Fidelity Fund certificate has repeatedly been held by our courts to constitute serious misconduct⁸.

[41] In respect of the contempt of court issue, even if one were to ignore the fact that the contempt order itself may be subject to an appeal regarding the respondent’s conviction and sentence, it stands uncontroverted that the respondent did not comply with the terms of the suspension order when he was under an obligation to do so and when his attempts to appeal that order finally ran out of options. Par 1.6 thereof compelled the respondent to hand over to the *curator ad litem* his “accounting records, files and documents containing particulars and

⁶ *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.

⁷ 28 of 2014.

⁸ *Law Society of the Transvaal v Machaka* (No2) 1998 (4) SA 413 (T); *Law Society of the Northern Provinces v Mamotho* 2003 (6) SA 467 (SCA); *De Freitas v Society of Advocates of Natal* 2001 (3) SA 750 (SCA) paras 11 and 14 and *Law Society of the Cape of Good Hope v Adams* 2013 (2) SACR 480 (WCC).

information relating to ... any moneys received, held or paid by the respondent for or on account of any person while practicing as an attorney ...”.

[42] On the respondent’s own version, he only handed over files “selected” by him and then only copies thereof. The reason why all files had to be handed over was twofold: the first is that the respondent, while being suspended, could not act as an attorney and had no cause to retain the files of clients and secondly, so that the curator could take control of all files where funds may have either been misappropriated or might still be due to trust creditors. These considerations were frustrated by the respondent in direct contravention of a court order.

The respondent’s books of account and handling of his trust account

[43] At the instance of the LSNP, Mr Vincent Faris has conducted interviews with the respondent and his bookkeeper, Mr Maake. He has also conducted an extensive investigation of the respondents’ books of account and the handling of the trust account.

[44] During the interviews, Mr Faris was informed that the respondent’s practice used the “Caseware” computer software program. According to Mr Faris, this program was not one dedicated and designed for legal practices.

[45] The respondent disputed the above opinion, but be that as it may, the investigation revealed that transfers from trust to business banking accounts were made in globular or arbitrary, rounded off-figures rather than actual calculated amounts.

[46] An examination of the ledger accounts further indicated that, although financial data had been adequately narrated therein, the accounts were not balanced and balance listings were not extracted in the manner prescribed in Rule 69.7.1 of the “old” Rules or Rule 35.14.1 of the “new” Rules⁹.

⁹ The “old” Rules refer to those published in GG 7164 of 1 August 1980 and the “new” Rules refer to those which came into effect on 1 March 2016 per GG 39740 of February 2016

[47] An example of how a globular amount of R 400 000,00, narrated as “fees”, were debited directly against the trust accounts, was as follows

Account number and name	Amounts
6[...] Mokoena TP	103 895.83
6[...]2 Mphahlele RN	109 327.96
6[...]3 Mnisi NJ	<u>186776.21</u>
	400 000.00

[48] Examinations of the client trust balances also revealed that some accounts reflected debit balances, indicating trust shortages. This was caused by payment having been made from the trust banking account without sufficient funds available on credit to justify such payments. Such debit balances were afterwards rectified when funds were received from the RAF.

[49] An examination of the trust bank statements and the returned paid trust cheques revealed that trust cheques were often issued as “bearer” and/or “cash”. Many of the encashed cheques had been deposited in the business banking account. Even where clients did not have banking accounts, the procedures provided for in the Rules had not been followed¹⁰.

[50] Based on the interviews conducted, the inspection of the respondent’s books and the source documents for the bookkeeping entries, Mr Faris indicated that the following contraventions had taken place:

- “10.3.1 *Section 78(1) of the Act in that It has failed to hold and keep sufficient monies in its Trust banking account to cover its obligations to Trust creditors as dealt with more fully in paragraph 8 above;*
- 10.3.2 *Section 78 (1) of the Act in that it failed to deposit Trust monies into the Trust banking account as dealt with mare fully in paragraph 7.3 above;*

¹⁰ Rules 69.6 and 35.13.15.1 respectively.

- 10.3.3 *Section 78(4) read together with Section 78(6)(d) of the Act in that it has failed to keep proper accounting records as required by the sub-sections as dealt with generally herein:*
- 10.3.4 *The appropriate provisions of Rule 68.1 of the Old Rule (Rule 35.5 of the New Rules) for the earns reason as mentioned in paragraph 10.3.3 above;*
- 10.3.5 *Rule 68.7 of the Old Rules (Rule 35.11 of the New Rules), in that it has failed to account to the complainants within the time and in the manner prescribed by the Rule as set out more fully in paragraph 6 above;*
- 10.3.6 *Rule 89.1 of the Old Rules (Rule 35.13.47.1.5 of the New Rules) for the same reason as mentioned in paragraph 10.3.2 above;*
- 10.3.7 *Rule 69.3.1 of the Old Rules (Rule 35.13.8 of the New Rules) in that it failed to hold and keep sufficient monies in its Trust banking account to cover its obligations to Trust creditors for the same reason as mentioned in paragraph 10.3.2 above;*
- 10.3.8 *Rule 69.3.2 of the Old Rules (Rule 35.13.9 of the New Rules) in that the accounts of clients were in debit as set out more fully in paragraphs 5.11 and 7 above;*
- 10.3.9 *Rule 69.7 of the Old Rules (Rule 35.14.1 of the New Rules) in that it has failed to extract lists of balances at regular quarterly intervals as required by the Rule;*
- 10.3.10 *Rule 70.3 of the Old Rules (Rule 35.22 of the New Rules) in that it has failed to lodge the relevant report timeously as required by the Rules as dealt with more fully in paragraph 9 above”.*

[51] In response, the respondent indicated that he mostly conducted a contingency practice in respect of personal injury claims. Of these, 85% are claims against the RAF. He only opens a ledger for a client once he receives payment from the RAF, usually in the form of payment of a bill of costs in respect of the merits of a matter. This, the respondent retained, in order to cover his costs.

[52] After a matter has been finalized in respect of the merits thereof, preparation is then done to proceed in respect of quantum. The expert reports necessary for this is funded by the respondent. The respondent explained what happened when the quantum portion of the matter was concluded as follows: *"Once the matter is settled quantum, this is the first time that some form of income is received by the client. The large majority of cases are done on a contingency fee basis, which entitles me to claim 25% of the claim or double the taxed bill of costs, whichever is the lesser. In most large claims I am entitled to claim 25% of the award that has been granted"*.

[53] The respondent however continued with his explanation later in his affidavit as follows: *"At this stage an entry is made into the client's ledger account and that reflected in the entry is the claim as a credit balance and I am entitled to 25% of the claim as part of the contingency fee agreement. Over and above the 25% I am also entitled to the costs and disbursements. The matter is only finalized once the bill of costs in regard to the quantum, has either been settled or determined by the Taxing Master. Once I have been awarded my costs, then only is the file finalized with the client"*.

[54] Despite accusing Mr Faris of not understanding the Caseware software user by the respondent, he "took heed" of Mr Faris' comments and changed his bookkeeping system to an "MS Excel Template".

[55] In respect of the example of the R400 000.00 globular fee referred to in paragraph 47 above, the respondent provided an explanation. It was this: he received an amount of R1 400 000.00 from the RAF in respect of Mr Mnisi's claim into his trust account. He then *"... realised that I would be entitled to 25% of this amount, namely R350 000.000. I approached the transfer of R400 000.00 as follows ..."*. He then explained that bills had on taxation been agreed on in favour of PT Mokoena in the sum of R105 510.22 and in favour of RN Mphahlele in the sum of R109 327.96. He then *"... made an error and believed that TP Mokoena would be entitled to a transfer of R103 895.83 and consequently I took this figure into account"*. He then took the amount in favour of RN Mphahlele also into account *"... into calculating the R400 000.00"*.

[56] The respondents' answer not only discloses contraventions of the Rules, but is also indicative of his inadequate bookkeeping. What should happen, so the deponent for the LSNP explained in reply, is that expenses incurred and fees earned during the course of a matter, even in respect of the merits of a claim, must be debited against a specific client's business ledger account. This the respondent did not do so. These expenses may only be recovered from funds received in the respondent's trust banking account and credited to that same client's trust ledger account (by way of a transfer). The Act and the Rules provide for this system of bookkeeping so as to ensure that one client's funds are not used to pay for another client's expenses (or, in this case, fees).

[57] The failure of the respondent to adhere to these principles and the failure to distinguish between trust account and business account transactions, amount to contraventions of Rules 68.3 and 53.7 respectively.

[58] The respondent subsequently employed an outside auditor to prepare a report in order to meet the criticisms expressed by Mr Faris. Mr Muller's objective, in his report, was to show that the respondent did not have deficits in his trust account. In order to achieve this, Mr Muller had to "re-do" some of the respondent's trust ledgers. These attempts fell short of the target and one of the prime examples thereof, is the matter of the respondent's client Mr Ngwepe.

[59] Mr Muller's reconstruction of the trust ledger of Mr Ngwepe looked as follows (after he had "reviewed" it, to use his own words):

Date	Transaction details	Dt	Cr	Balance
		Amount	Amount	amount
25 Aug 2016	Magtape Credit		4 944 286.25	4 944 286.24
	Fees 25%	1 236 216.01		3 708 070.24
	VAT on fees	173 070.24		3 535 000.00
26 May 2017	Ngwepe PM	35 000.00		3 500 000.00
26 May 2017	Ngwepe PM	500 000.00		3 000 000.00

29 May 2017	Ngwepe PM	500 000.00		2 500 000.00
02 June 2017	Ngwepe PM	500 000.00		2 000 000.00
19 June 2017	Ngwepe PM	500 000.00		1 500 000.00
29 June 2017	Ngwepe PM	500 000.00		1 000 000.00
02 July 2017	Ngwepe PM	500 000.00		500 000.00
13 Julie 2017	Ngwepe PM	500 000.00		nil

[60] This accounting version does not reflect the reality. What happened was that the respondent had indeed received R4 944 286.25 from the RAF in settlement of Mr Ngwepe's claim. The respondent thereafter borrowed (on his own version) R3 535 000.00 from Mr Ngwepe. This amount should then have been debited to the trust account, but it was not. The original trust ledger at the time of Mr Faris' investigation, however, showed a debit balance of R3 142 355.77. The respondent then repaid his loan from Mr Ngwepe in installments, using trust cheques. These installments are reflected in the rounded figures shown in the above entries.

[61] Muller ignored the respondent's version of a loan and treated the repayments as payments from the originally received amount. Even if this (factually incorrect) version was to be accepted, then the respondent paid his client the capital of his claim in instalments over a period of two months, thereby also contravening the Rules.

[62] Furthermore, even if one were to accept the respondent's criticism of Mr Faris' report, then, on his own version, there were trust deficits from time to time. I refer to only two instances, the first in June 2016 and the second in July 2016.

[63] As at June 2016 there was a deficit of at least R230 229.65, illustrated as follows:

Trust liability	R	Respondent's version	R
Maneli	R131 567.00	Not disputed	R131 567.00
Musanda	R143 000.00	Not disputed	R143 000.00

Mudau	R375 000.00	Alleges that balance should be:	R0
Mokwebo	R425 472.83	Alleges that balance should be:	R370 076.83
Nkuta	R1 256 537.00	Alleges that balance should be:	R1 008 232.55
Total	R2 331 576.83	Total	R1 652 876.38
Trust funds in bank	-R1 422 646.73		-R1 422 646.73
Minimum trust deficit	R908 930.10	Minimum trust deficit on respondent's version	R30 299.65

[64] As at July 2017, if we accept the respondent's version, there was a trust deficit of at least R648 821.59:

Trust liability	R	Respondent's version	R
Myeki	R495 300.00	Alleges that balance should be:	R0
Ngunda	R379 341.46	Not disputed	R379 341.46
Chauke	R975 000.00	Not disputed	R975 000.00
Mahtathini	R600 000.00	Not disputed	R600 000.00
Mokoena	R1 560 419.64	Not disputed	R1 560 419.64
Mboka	R1 363 678.39	Not disputed	R1 363 678.39
Kgabo	R600 000.00	Alleges that should be:	R0
Total	R5 973 739.49	Total	R4 878 439.49

Trust funds in bank	-R4 229 617.90		-R4 229 617.90
Minimum trust deficit	R1 744 121.59	Minimum trust deficit on respondent's version	R648 821.59

[65] There were various other instances of trust debit balances, which the respondent has admitted in a later letter¹¹.

[66] Rules 35.13.8 and 35.13.10 required the respondent to report these trust deficits to the LSNP, which he never did.

[67] The initial papers were sufficient to have Avvakoumides AJ and Rabie J to conclude on 7 February 2020, that the respondent had to be suspended from practice.

[68] The subsequently delivered supplementary founding affidavits, disclosed numerous further instances of offending conduct, both having occurred before the respondent's suspension and thereafter. These related to numerous complaints by clients of overreaching, non-accounting, non-performance of mandates and touting.

[69] I have already earlier referred to the number of supplementary affidavits exchanged between the parties and it would unduly burden this judgment to deal with all the allegations in the various sets of affidavits individually. I shall therefore deal with the further complaints thematically.

Overreaching

[70] The overreaching in question does not relate to overcharging in the ordinary sense, but in abusing the terms of Contingency Fee Agreements (CFA's) and the provisions of the Contingency Fees Act¹².

¹¹ The letter is dated 15 February 2019 and refers to 14 trust account having debit balances.

[71] The above provisions were contravened by the respondent often simply charging and deducting 25% of the capital amounts received by him on behalf of his clients, being the maximum amount recoverable by him, without calculating whether his fees plus 100% success fee are lower or not. The respondents, in addition to this failure, would then retain 100% of the party and party costs paid by the RAF, inclusive of fees and disbursements.

[72] The above practice continued even after Faris investigation and is apparent from the respondents' ledger accounts, even when "redone" by him after the fact.

[73] One of the many examples of this is, for instance, the matter of the respondent's client M.E. Lehodi. The "redone" ledger looks as follows:

941 Lehodi ME sr11825						
RAF payment	11/19/2015		AJ		3 273 395.85 -	3 273 395.85 -
Closing balance	2/28/2016	Opening				3 273 395,85 -
Opning balance	3/1/2016	Closing				3 273 395,85 -
Fees + VAT (LehodiME)	3/1/2016		AJ	500 000.00		2 773 395,85 -
Fees + VAT (LehodiME)	3/4/2016		AJ	20 000.00		2 742 795,85 -
Cheque 2578LehodiME/LinconSL	3/4/2016		GL	10 600.00		2 762 795,85 -
Cheque 2577LehodiME/LinconSL11403	3/8/2016		GL	330 000.00		2 412 795,85 -
Cheque 2573LehodiME/LinconSL11403	3/8/2016		GL	500 000.00		1 912 795,85 -
Cheque 2574LehodiME/LinconSL11404	3/8/2016		GL	500 000.00		1 412 795,85 -
Cheque 2575LehodiME/LinconSL11403	3/8/2016		GL	500 000.00		912 795,85 -
Cheque 2576LehodiME/LinconSL11403	3/8/2016		GL	500 000.00		412 795,85 -
Fees + VAT (LehodiME)	3/11/2016		AJ	300 000.00		112 795,85 -
Fees + VAT (LehodiME)	3/23/2016		AJ	112 795.85		0,00
		Change		3 273 395.85	3 273 395.85 -	0,00
		Close				0,00
RAF cost payment	1/25/2019		AJ		219 992.25 -	219 992.25 -
Fees and disbursements	2/1/2019		GL	219 992.25		0,00

[74] The above indicates the following: 25% of the capital of R3 273 395.85 received equals R818 348.96. This is the maximum amount of fees which the respondent would have been entitled to in terms of the relevant CFA. He, however, debited R500 00.00 on 1 March 2016 and another R20 000.00 on 4 March 2016 as "Fees + VAT". Then after having paid the client R2 340 600.00 (in installments) he debited a further R300 000.00 on 13 March 2016 and R112 795.85 on 23 March

2016, both debits labelled as “Fees + VAT”. Thereafter, when he received the amount of R219 992.25 as the “RAF Cost payment” on 25 January 2019, he debited that on 1 February 2019 as “Fees and Disbursements.” This means that the respondent has debited R932 795.85 as fees and a further R219 992.25 as fees and disbursements, totaling R1 152 788.10. According to the respondent’s explanation, the fee of R818 348 excluded the disbursements which he had incurred. He argued that he was therefore entitled to additionally retain the fees and disbursement amount paid by the RAF. He persisted with this claim without distinguishing the portion of fees included in the RAF payment, from the portion relating to disbursements. He also failed to deal with or explain sufficiently whether part of his “merits investigators’ fees” were actually fees which he had claimed or not. The further difficulty with both his explanation to the court and his accounting to his client, was that there were no invoices produced which supported the disbursements claimed and neither could or did he furnish any particularity enabling the client or the court to determine whether double the fees were less or more than 25% of the capital payable to the client.

[75] Even if one were to ignore for the moment the dispute as to whether a practitioner is, in calculating the 100% success fee, to include or exclude VAT on fees, what the respondent was simply doing, was appropriating 25% of the client’s capital, and adding VAT thereon (R818 348.96 plus 14%VAT). This is then in addition to the retention of the fees portion contained in the RAF costs payment.

[76] One can easily understand why clients have complained to the LSNP that the respondent had never explained to them his fee structure or his accounting to them.

Touting

[77] In total, the LSNP and the LPC have received 19 complaints from clients, complaining that the respondent had touted mandates from then and even obtained their particulars and proceeded with claims against the RAF without having been instructed by the clients. The complaints were from clients Mthembu, Sehati, Lebelo, Phalane, Mpane, Letsoalo, Mkwanyai, Motaung, Sibitsi, Lerikara, Khemisi, Sibeko, Ndlazi, Majopa and Khumalo.

[78] Apart from a bald denials, the respondent sought to distance himself from these complaints by attacking the RAF's investigators when they investigated and uncovered some of the instances of touting.

[79] In total, the RAF referred to nine affidavits from respondent's clients to the LSNP/LPC. Of these, three clients specifically identified "merits investigators" utilized by the respondent as the persons who had approached them. One example of such an affidavit, is the following:

"I MAKHOSANDILE SOLOMON NTMELA declare under oath in English:

1

I am a male, I/D: 8[...], employed as pick & packer at Avlern cables. I reside at 1[...] L[...] Court, S[...] Str, Actonville, Benoni with telephone number 0[...].....

2

On today's date I was approached by BJ Venter of the RAF forensic department regain claims I lodged against the RAF.

3

On 2013/04/07 I was involved in an accident in Actonville area as a pedestrian and sustained serious injuries as a result of this accident. I was admitted to Tembisa hospital for further treatment for a period of approximately two and a half months.

4

Around August Of 2013 I approached the RAF representative at Tembisa hospital office one Dimakatso with the intention of lodging a claim against the RAF as a result of injuries sustained in above mentioned accident. I provided Dimakatso with all requested documentation and she assisted me in lodging a claim with the RAF as a direct claimant. Venter showed me page 8 of the RAF1 claim form originating from claim file with link number 3410883 where the "Signature of the Claimant" is to be made and I can confirm that it is my signature as claimant thereon (MSN1).

5

Venter showed me the following documentation originating from the claim with link number 3557216 as lodged by M A Selota attorneys and I was asked to comment thereon:

Covering letter dated 10th April 2014 originating from M A Selota attorneys to the RAF Menlyn indicating that this firm is lodging a claim on my behalf: I have no knowledge of this alleged representation by this firm and did not instruct them to act on my behalf. My name MAKHOSANDILE is also spelt wrongly as MAKHASAZANA (MSN2).

SPECIAL POWER OF ATTORNEY form signed in Kempton Park, undated giving M A Selota attorney to the RAF providing mandate to act on and lodge a claim on my behalf: I have no knowledge of this document allegedly signed in Kempton Park and it is not my signature appearing thereon. The witnesses that signed this document are also unknown to me. My name MAKHOSANDILE is also spelt wrongly as MAKHOSANA (MSN3).

CONSENT form signed in Kempton Park undated, giving Selota Attorneys authority to obtain all medical records relating to this accident from hospitals. I have no knowledge of this document allegedly signed in Kempton Park and it is not my signature appearing thereon. The witnesses that signed this documents are also unknown to me. My name MAKHOSANDILE is also spelt wrongly as MAKHOSANA (MSN4).

Copy of my I/D issued 1986/07/12: it is my identity document, but have no knowledge as to how M A Selota attorneys came to be in possession thereof. The same originally certified copy of my I/D is lodged on my direct claim. As far as I can recall I provided Dimakatso with my original I/D on lodgment of the direct claim and she made a copy of it (MSN5).

Medical assessment completed by a Dr V Jovannovic of Lynwood Pretoria who allegedly assessed me on 2014/03/28 and completed the medical report on the RAF1 form page 9 to 12 lodged by M A Selota attorneys: I was never examined by this doctor as alleged thereon. M name MAKHOSANDILE is also spelt wrongly as MAKHASANA on page 9 (MSN6).

I was also shown copies of several medical records in my name originating from Tembisa hospital on this claim file and have no knowledge as to how Selota obtained these records.

Around beginning of May 2015 I deposed to an affidavit at SPS Actonville after being informed of the alleged representation of M A Selota attorneys cancelling the alleged mandate and provided it to Dimakatso at Tembisa hospital for forwarding.

7

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the oath to be binding on my conscience”.

[80] The respondent, rather than dealing with the seriousness of the allegations, accused the RAF of conducting a witch-hunt against him, accused the forensic investigator of impropriety in commissioning the affidavit and alleged that these complaints were not actual complaints made by disgruntled clients, but complaints instigated by RAF forensic investigators.

[81] Touting even through the “agency of another” constitutes breaches of Rules 89(1)¹³, 43(1) and 49.17¹⁴, 12.1, 18.10 and 18.22¹⁵. It has always been viewed in a serious light by our Courts¹⁶.

Failure to account and delayed payments to clients

[82] There are several complaints included in the papers that illustrate the respondent's delayed payment of trust funds and his failure to account for trust funds. The De Broglio and Sewdas complaints already discussed above provide clear illustration of the respondent doing so.

[83] An attorney is obliged to pay any amount due to a client within a reasonable time¹⁷. The Rules also oblige a practitioner to account fully to its client in writing

¹³ Of the “old” Rules.

¹⁴ Of the “new” Rules.

¹⁵ Of the Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Legal Entities.

¹⁶ See *De Villiers v McIntyre* NO 1921 AD 425 at 429 and *Cirota v Law Society, Transvaal* 1979 (1) SA 172 (A).

¹⁷ Rules for the Attorneys' Professions, Rule 35.12.

within a reasonable time after the performance or earlier termination of any mandate¹⁸. Each account must contain:

- 83.1 details of all amounts received by it in connection with the matter concerned, appropriately explained;
- 83.2 particulars of all disbursements and other payments made by it in connection with the matter;
- 83.3 all fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed; and
- 83.4 the amount due to or by the client.

[84] In the complaint by P G Morudu, also discussed above, the respondent received the capital award for general damages in the amount of R280 000.00 on 18 May 2018. The respondent contends that he could not account to Morudu until he received the costs after 28 November 2018. There is no reason that the respondent could not account to Morudu prior this. The respondent merely elected not to do so, resulting in the complaint.

[85] In the complaint by T Mukwani Attorneys on behalf of Buthelezi, an amount of R963 309.00 was awarded to Ramolotja (Buthelezi's biological son) during February 2017. These funds were paid to the respondent on 17 August 2017. At the time, the respondent acted under the instruction of Ramolotja's mother, who instructed the creation of a trust. The respondent debited a contingency fee from these funds (when it was recorded in the Court order that there was no contingency fee agreement) and paid an amount of R722 482.00 into an ABSA account pending registration of the trust. Ramolotja's mother subsequently passed away on 26 November 2017 and Buthelezi engaged with the respondent thereafter.

[86] Buthelezi's engagements with the respondent resulted in him terminating the respondent's mandate on 21 February 2018 and, on 26 February 2018, demanding

¹⁸ Rule 68.7 of the “old” Rules was applicable at the time. The “new” Rules have the same iteration of this requirement.

the transfer of the funds held on behalf of Ramolotja within two days. In his response the following day the respondent *inter alia* indicated: “*we confirm that we are not going to act further in this matter as per the termination of mandate*” and “*we further see no need to recall the moneys from ABSA until legal process has been finalised*”.

[87] The respondent nevertheless proceeded to form and register the trust without mandate or authority. The respondent signed the trust deed on 12 March 2018, ABSA Trust only consented to administering the trust on 25 April 2018, and the Master's letter of authority was issued on 31 May 2018.

[88] During March 2018 an action was issued on behalf of Ramolotja for the repayment of the funds due to him. On 4 September 2019 an order was made against the respondent and the respondent, *inter alia*, for repayment of these funds and the establishment of a new trust for the benefit of Ramolotja. The respondent has unsuccessfully attempted to rescind this order, judgment being handed down on 21 August 2020.

[89] The Court *inter alia* found that:

- 89.1 There was considerable merit in the contentions that the respondent deliberately formed the trust to justify his continued failure to make the funds available;
- 89.2 The respondent did not advance a sustainable explanation for his failure to recall the funds from ABSA once his mandate was terminated;
- 89.3 The respondent took it upon himself, without mandate, to decide what was best for Ramolotja and what to do with his monies and proceeded unilaterally even after service of summons on 5 April 2018.

[90] The high-water mark of the respondent's answer is to attempt to justify his conduct under the auspices that he did so in Ramolotja's interests. This is itself a concession that he delayed the payment of the trust funds. However, at no stage did the respondent make this assertion in his correspondence addressed to Buthelezi's attorneys. His justification can be rejected for the same reasons as it was by the

honourable Gilbert AJ. The respondent acted without mandate and he was dishonest in doing so.

[91] In the Magopa complaint the respondent received payment of the capital award of R270 000.00 on 7 February 2017 and the costs of R152 099.98 on 16 February 2017. On 5 September 2017, when the respondent's mandate was terminated, he had still not accounted to nor paid Magopa. The respondent did not account to Magopa (although he appears to be of the view that a bill of costs is accounting) and paid Magopa's funds to him on 26 March 2018, more than a year after their receipt.

[92] In the Mathibela claim lodged with the fidelity fund, partially discussed above under overreaching, it is not certain exactly when the capital award was paid to the respondent but it was certainly paid prior to the first payment of costs, during 2013. The respondent only paid Mathibela her funds in June 2014, does not offer explanation for the delay, and prepared his statement of account after a delay of several years, on 21 February 2017.

[93] In the complaint by SB Ndlazi, dated 23 January 2019, the respondent was mandated in a claim against PRASA. Ndlazi complained of the respondent's failure to account, to deal properly with his instructions, and to account to him. The mandate was subject to a contingency fee agreement. The claim was settled and the capital award, R264 372.00, was paid into the respondent's trust bank account on 15 October 2018. The respondent did not pay any funds to Ndlazi. He alleges he could not do so without first receiving the costs. There is no merit in this contention. As will be demonstrated, the respondent simply chose to delay the payment and accounting to Ndlazi.

[94] The respondent later paid Ndlazi an interim payment in the amount of R132 186.00 on 8 April 2019, six months after his receipt of her funds, under the premise that he had not received the taxed costs. The amount was calculated deducting his contingency fee and the disbursements. There is no reason why this could not have been done in the first place.

[95] The taxed costs in the amount of R86 211.37, were however actually paid to the respondent on 28 February 2019 i.e prior to his interim payment to Ndlazi. The respondent alleges that he only became aware of his receipt of the taxed costs in June 2019. Even affording the respondent the benefit of the doubt, there is no explanation for the respondent taking a further three months to account to Ndlazi on 10 September 2019.

[96] In the complaint by BB Mashiloane, dated 7 November 2019, the respondent received the capital award for general damages amounting to R900 000.00 on 24 October 2019. The client was adamant in her complaint that the matter was contingency fee based and that the respondent was to charge 25% of the capital award. At the time of the complaint, the respondent was willing to pay Mashiloane an amount of R431 000.00. Mashiloane patently had no idea how this amount was determined.

[97] The respondent summarily alleged that there was no contingency fee agreement without addressing the obvious discrepancy with the complaint nor explaining the basis for his mandate, and describes the amount paid to Mashiloane as an interim payment after deducting his provision for his attorney and client fees and disbursements. On 14 January 2020 the respondent received the taxed costs in the amount of R223 780.06 and paid an amount of R675 000.00 to Mashiloane on 17 January 2020. The respondent has still not properly accounted to Mashiloane, incorrectly contending that he does not have to do so yet.

[98] In similar fashion, there were also complaints by other attorneys that the respondent had delayed making payment to them after his mandate had been terminated or to assist or to respond to them regarding his erstwhile clients. There were complaints by De Broglio attorneys, Neihaus McMalon Inc, Oosthuizen & Steyn attorneys, Riette Oosthuizen attorneys and Ndhima attorneys. He also failed to pay Adv. Ronnie Maepa fees due to him for more than three years.

[99] All these complaints were fully supported by substantiating documents but treated by the respondent with either disdain or only superficially. The respondent could also offer no cogent reasons why he did not hand over client files to new

attorneys, once his mandate had been terminated, this led to further complaints by colleagues, such as Moss & Associates and Mangxola Attorneys.

Breaches of duties to a court in proceedings of this nature

[100] The LPC has contended that the respondent has breached his duties to a court in proceedings of this nature.

[101] Our Courts have repeatedly expressed themselves on the conduct required of practitioners in proceedings of this nature. An approach to the proceedings contrary to this is itself unprofessional conduct and a separate, substantive ground for a practitioner's removal from the roll or suspension from practise. The following principles *inter alia* apply:

- 101.1 When a legal practitioner receives an application for his suspension or striking, he should realize that the time for telling the truth has arrived¹⁹;
- 101.2 A practitioner must from the outset declare the relevant facts fully and openly and not allow the truth to emerge gradually. The practitioner should raise defences in a manner that evince complete honesty and integrity²⁰;
- 101.3 From the nature of disciplinary proceedings, it follows that the legal practitioner concerned is expected to co-operate and provide where necessary information to place the full facts before the court, to enable the court to make a correct decision. Broad denials and obstructionism have no place in disciplinary proceedings²¹;
- 101.4 Where allegations and evidence are presented against a legal practitioner, they cannot simply be brushed aside, the legal practitioner concerned is expected to respond meaningfully to them and to furnish a proper explanation²²;

¹⁹ *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) 656 D.

²⁰ *Law Society of the Northern Provinces v Sonntag* 2012 (1) SA 372 (SCA) 380 C – I.

²¹ *Prokureursorde van Transvaal v Kleynhans* (supra) at 853 G – H.

²² *Hepple v Law Society of the Northern Provinces* 2014 JDR 1078 (SCA) at par 9.

- 101.5 A legal practitioner has a duty to co-operate and to be completely transparent by furnishing the Court with all the necessary information so that the full facts are placed before the Court to enable it to make a correct and just decision²³;
- 101.6 A legal practitioner should not, instead of dealing with the issues, launch an attack on the Council, accuse the accuser and seek to break down his/her controlling body. It has become common occurrence to do so, it is itself unprofessional conduct and a strategy that the courts cannot countenance²⁴; and
- 101.7 As a matter of principle, a legal practitioner who is dishonest under oath in defending himself in disciplinary proceedings cannot complain if his perjury is held against him when the question arises whether he is a fit and proper person to continue practising²⁵.

[102] The respondent's answers to the allegations against him are consistent with the creation of narratives instead of dealing with the allegations against him and providing full and frank disclosures to the Court. The respondent has also persistently raised unmeritorious technical defences to avoid accounting for his conduct:

- 102.1 The respondent raised various technical arguments alleging the violation of his right to a fair trial;
- 102.2 The respondent has consistently sought to rely on arguing that evidence is "inadmissible hearsay evidence";
- 102.3 The respondent has challenged the authority of the deponent to the supplementary founding affidavits;
- 102.4 The respondent has challenged the touting complaints under the auspices that they are not under oath;
- 102.5 The respondent steadfastly relies on the baseless and disingenuous defence that the court order of 7 February 2020 is "incomplete";

²³ *The South African Legal Practice Council v Bobotyana* 2020 JDR 2148 (ECG) at par 63.

²⁴ *Law Society of the Northern Provinces v Mogami & Others* 2010 (1) SA 186 (SCA) at 195 – 196, par 26.

²⁵ *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) 655H.

102.6 The respondent consistently takes unwarranted issue with him being called upon to answer to complaints in the present proceedings that have not been referred to him previously.

[103] The respondent has also accused the LPC's attorneys, without any foundation, of having "undertaken fraudulent activities", of being "desperate" to justify disbursements which never occurred and by delaying matters intentionally to use the respondent as a scapegoat.

[104] Most telling of the respondent's misconduct towards the court, was his failure to hand over all his books of account and ledgers in terms of his suspension order, and his presenting false allegations to this court under oath.

[105] The LPC summed up the last mentioned perjury as follows: In an affidavit deposed to on 2 March 2021 and filed with this Court under case number 10869/2021, the respondent made several false allegations under oath, including the following:

105.1 The respondent informed the Honourable Court that he was in possession of a fidelity fund certificate for 2021. He did so in circumstances where he was not in possession of such certificate and where he was fully aware thereof;

105.2 The respondent stated he was in possession of fidelity fund certificates during the period 2008 to 2018. The respondent however practised without being in possession of fidelity fund certificates during the periods 1 January 2008 to 20 November 2008, 1 January 2017 to 7 March 2017 and 1 January 2018 to 20 February 2018 and he was fully aware thereof;

105.3 The respondent informed the Court, with reference to his suspension from practising as an attorney, that an appeal process is still underway. He did so in circumstances where the Constitutional Court had already dismissed his application for leave to appeal, on 10 February 2021 and whilst no appeal or application for leave to appeal were in existence; and

105.4 The respondent further alleged that he was practising as an attorney in accordance with the provisions of the LPA. He was practising in contravention of Section 84(1) of the LPA and he was fully aware thereof.

[106] In supplementary heads of argument filed on behalf of the respondent, composed by senior counsel, a suspension from practice (with certain conditions) was proposed as an appropriate sanction. This was mooted, should this court find that the respondent is no longer a fit and proper person to “presently” continue to practice, as a “timeously raise(d) plea”. Rehabilitation was further argued as a motivation for the acceptance of the proposed sanction.

[107] The above proposal, by its nature, implies that offending conduct has taken place. This much is confirmed by a submission in those heads of argument that it *“... is clear from the papers that the Achilles heel of the respondent was his bookkeeping ...”*.

[108] Quite apart from the concessions made by the respondent’s senior counsel on his behalf, we are satisfied that, on the evidence presented by the LSNP and the LPC which the respondent could not properly refute²⁶ or, in some instances even meet sufficiently to raise a real dispute²⁷, offending conduct had been established. There instances of offending conduct, however, went far beyond the concessions made about inferior bookkeeping.

[109] We find that the following offending conduct and breaches of duty have been established on the part of the respondent:

- A failure to keep proper books of account²⁸;
- A failure to correctly debit fees²⁹;
- A failure to distinguish between trust and business account transactions³⁰;

²⁶ In the manner contemplated in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA).

²⁷ As described in *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154E-H.

²⁸ Contravention of Rule 35.5.

²⁹ Contravention of Rule 35.13.14.

- A failure to extract lists of balances of trust creditors and funds held in his trust account regularly³¹;
- Allowing debit balances on his trust account and not reporting it³²;
- Failure to make payments timeously³³;
- Failures to account to client and to retain their capital amount³⁴;
- The failures to attend to clients' matters and to respond to letters from their new attorneys³⁵;
- Overreaching and contravening the Contingency Fees Act³⁶;
- Touting³⁷;
- Practising without a Fidelity Fund Certificate.
- Improper conduct by making false statements during court proceedings.

Fit and proper

[110] Once the offending conduct has been established we are obliged to consider whether the respondent is still a fit and proper person to practice law. This entails weighing up the conduct of the respondent against the conduct expected of a legal practitioner who had taken the oath to truly and honestly demean himself as (in this case) an attorney³⁸.

[111] When the Court admits an attorney to the profession, he is put in a position to conduct matters of trust with the public. He occupies a position of great confidence and power and the Court is entitled to demand a very high standard of honour from him in the profession. The law exacts from him *uberrima fides* where he acts as agent for others; that is the highest possible degree of good faith³⁹.

³⁰ Contravention of Rule 35.7.

³¹ Contravention of Rules 35.14.1 and 35.14.3.

³² Contravention of Rules 35.13.8 and 35.13.10 as well as Rules 35.13.8 and 35.13.11.

³³ See also *Selota Attorneys v ONR and Others* (2018/11026) [2020] ZAGPJHC 232; [2020] 4 All SA 569 (GP) (21 August 2020).

³⁴ *LSNP v Mabunda* 2019 JDR 2042 (MN).

³⁵ *Incorporated Law Society, Transvaal v Visse and Others* 1958 (4) SA 115 (T).

³⁶ *TM obo MM v MEC for Health Mpumalanga* 2023 (3) SA 173 (M....).

³⁷ Contravention of Rules 43(1) and 49.17.

³⁸ See: *Prokureursonde van Transvaal v Kleyhans* 1995 (1) SA 839 (T) at 851 E -F.

³⁹ *Incorporated Law Society, Transvaal v Visse and Others; incorporated Law Society Transvaal v Viljoen* (supra) at 131 D - G.

[112] It is a fundamental duty of every practising attorney to ensure that the books of the firm are properly kept and that there are sufficient funds at all times to meet the trust account claims⁴⁰. The keeping of proper accounting records underpins the legislature's endeavours to protect the interests of the public, failure by an attorney to do so is a serious contravention⁴¹.

[113] An attorney's duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty. Neither negligence nor wilfulness is an element of a breach of such duty⁴². Where trust money is paid to an attorney it is his/her duty to keep it in his/her possession and to use it for no other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have available liquid funds in an equivalent amount. The very essence of a trust is the absence of risk. It is imperative that trust money in the possession of an attorney should be available to his/her client the instant it becomes payable. Trust money is generally payable before and not after demand⁴³.

[114] We find that the respondent's conduct did not measure up to the standard of an honest and diligent attorney. His failures and repeated breaches of conduct, over a substantial period of time and affecting numerous clients, render him unfit to practice as a member of a respected and honorable profession.

Appropriate sanction

[115] Having determined that the respondent's conduct resulted therein that he is no longer a fit and proper legal practitioner, we have to determine the appropriate sanction.

[116] In the supplementary heads of argument referred to earlier, senior counsel urged this court to exercise mercy. An argument was advanced that, although numerous clients may have suffered at the hands of respondent, thousands of others

⁴⁰ *Incorporated Law Society (OFS) v V* 1960 (3) SA 887 (O) at 890C.

⁴¹ *Holmes v Law Society of the Cape of Good Hope and Another Law Society of the Cape of Good Hope v Holmes* 2006 (2) SA 139 139 (C) at 152B – F.

⁴² *Incorporated Law Society, Transvaal v Behrman* 1977 (1) SA 904 (T) at 905 H.

⁴³ See: *Law Society, Transvaal v Matthews* (supra) at 394; *Incorporated Law Society, Transvaal v Visse and Others*; *Incorporated Law Society Transvaal v Viljoen* (supra) at 118 F – H.

have benefited from his practice. He took on work on a contingency fee basis, advanced the costs of expenses and disbursements necessary to prove client's claims and did so in circumstances where clients would not otherwise have been able to advance their cases.

[117] The supplementary heads of argument alleged that the respondent was no "wilful" in his conduct. This submission, insofar as it may have intended to imply that the respondent's conduct was simply negligent bookkeeping, is not supported by the facts. The payment of trust funds were purposely and not inadvertently delayed. The borrowing of trust funds from at least one client, also indicated that the respondent had, at least from time to time, been in need of funds and used a client as an interest-free source, the accounting regarding this loan was only incorrectly done, this could only have been done intentionally.

[118] The manner in which the overreaching took place also displayed a conscious approach, namely simply taking 25% (plus VAT) from clients and keeping whatever additional fees the RAF paid as part of party and party costs. The seriousness of this unlawful practice is exacerbated by the numerous instances in which the respondent then omitted to either account to his clients or to explain the fees retained by him to them. The evidence indicate a pattern of wrongdoing.

[119] The argument that the court was faced with two conflicting versions of experts regarding the status of the respondent's trust accounts and whether there were deficits or not, is also without foundation. As indicated earlier, the respondent's expert's ex post facto attempt at rectifying the respondent's books, on evidence presented, could not displace the objective facts. The fact is simply that there were trust deficits from time to time. This means that trust funds belonging to clients have been misappropriated by the respondents, whether to pay disbursements or to pay either clients or to be taken as fees. It is trite that such conduct is viewed in the most extreme light by our courts.

[120] There is also a more disturbing feature of the respondent's conduct. He appears not to have appreciated the seriousness of his serial breaches of his duties and obligations. Each allegation is either avoided or the case of the breach is

blamed on someone else (including the LPC). This shows a lack of insight in the duties and standards of conduct expected from a legal practitioner.

[121] This lack of insight is further illustrated by the following: in the supplementary heads of argument the following was said about the respondents attitude displayed in his papers towards the LPC and its attorneys: *“The respondent has requested myself [the senior counsel] to express his remorse for criticizing the Applicant in his Opposing Affidavit and objecting to evidence on the basis that it is of a hearsay nature. The Respondent informed me that he did not intend to be obstructive. He will be present at the hearing to apologies in person should he be allowed to do so. He sincerely wishes to “come clean” in this respect of this aspect ...”*.

[122] When the matter came before us, not only were the senior counsel and the proposed apologies absent, but the respondent re-launched a verbal attack on the LSNP, the LPC and their attorneys.

[123] In oral argument further, despite reiterating the unlawful application of the provisions of the CFA by describing how he simply deducted 25% of the capital amounts received on behalf of his clients, as his fees (and, in some instances, returning those fees which formed part of the party and party costs paid by the RAF), the respondent still maintained that none of his clients suffered any prejudice.

[124] The respondent refused to consider whether the abovementioned practice resulted in overreaching and kept justifying his position, despite the provisions of the CFA to the contrary. The only evidence that he may have been entitled to 25% of the Capital in instances where that may have been less than double his fees, were not located in attorney and client bills, but in accounts rendered to clients. There were, however, few and far between and in respect of some clients, he conceded that those who had complained “may not have been given a statement”.

[125] In respect of the issue of touting, which the respondent denied, he explained that he employed ad hoc merits investigators. These investigators are paid a fixed amount per matter and they also assist in obtaining hospital and police records. The respondent, however, also stated that if these investigators *“... meet a potential*

client, they refer the client to me. If they were to refer the client to someone else, they are then not honest with me ...”.

[126] Insofar as the RAF’s investigators have obtained affidavits from clients, the contents of which go further than the respondent’s exculpatory version, the respondent labelled all those affidavits as “fraudulent”.

[127] In respect of complaints by clients that he had not paid them or not paid them timeously, the respondent conceded the facts, but claimed that the clients had “rushed to the Law Society” before he could pay them.

[128] The respondent, in dealing with the serious allegations against him, in maintaining a pattern of responses whereby he always blamed someone else for his transgressions, displayed a lack of acceptance of accountability and lack of insight. He even went so far as to claim that Mr Faris had not “understood” his accounting system and that “all” the shortcomings identified in his trust ledgers “had been addressed”.

[129] The respondent conceded that overreaching amount to an attorney stealing from his own client, but claimed that if this had been done without intention, then that was mere “inadvertent” conduct.

[130] We were, after the dismissal of the points *in limine* which Adv Mteto had been briefed to raise on behalf of the respondent, urged by her to display mercy and to find that the respondent’s conduct and his transgressions can be corrected by way of mentorship.

[131] Had the respondent taken steps to remedy the shortcomings in his financial management of his clients’ affairs and his trust account during the period that he had continued to practice since his suspension or had he displayed insight into his transgressions and taken responsibility for it (as argued by his erstwhile senior counsel), one could have considered Adv. Mteto’s plea as a possible appropriate sanction.

[132] However, when one takes the totality of transgressions into account, this court would be failing in its duty were we not to find that the cumulative effect of the offending conduct demands that the respondent be struck off the roll of practitioners.

[133] For the reasons we imposed the sanction contained in the order set out at the commencement of this judgment.

Order

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

1. The respondent, Mamolatelolo Alfred Selota 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 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 administrated 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.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree and it is so ordered.

N V KHUMALO
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 & 20 November 2024

Judgment delivered: 15 May 2025

APPEARANCES:

For the Applicant:	Mr R Stocker
Attorney for the Applicant:	Rooth & Wessels Inc, Pretoria.
For the Respondent:	Adv N S Mteto together with
	Respondent in person
Attorney for the Respondent:	Rammutla-at-Law Inc, Pretoria