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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2024-103400

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 23/5/25

SIGNATURE

In the matter between:

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

VICTOR MDUNGASI MASHELE

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal

representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 21 May 2025.

Summary: An attorney who misappropriates trust funds is to be regarded as being unfit and improper to remain on the roll of legal practitioners. The sanction of removal from the roll is the most appropriate sanction to be imposed by this Court. Held: (1) The draft order marked X and attached to this judgment is made an order of this Court.

JUDGMENT

MOSHOANA, J (MBONGWE J CONCURRING)

Introduction

[1] The learned Justice of Appeal, His Lordship, Mr Justice Eksteen in *Vassen v Law Society of the Cape of Good Hope (Vassen)*¹, expressed himself in the following terms:

“In this regard, it must be borne in mind that the profession of an attorney, as an officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members, and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly. When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that which it is being held, and that it will be available to be paid to the persons on whose behalf it is

¹ 1998 (4) SA 532 (SCA) at 538G.

held, whenever it is required... **The theft of money held by him in trust ... is, in my view, indeed a weighty consideration militating against any lesser stricture than his removal from the roll...**”

- [2] Involved in the present application is theft of trust money or misappropriation of trust funds. The present is an unopposed application launched by the South African Legal Practice Council (LPC) against Mr Victor Mdungasi Mashele (Mr Mashele), an admitted attorney of the High Court of South Africa. It suffices to mention that in November 2024, Mr Mashele filed a notice of intention to defend the present application. Despite endless indulgences given to Mr Mashele, he failed, with extreme reticence to deliver an answering affidavit, out of which affidavit, his thoughts about the alleged misconduct would have been revealed.
- [3] The LPC has revealed to this Court various acts of misconduct. Mr Mashele was aware of those serious allegations of misconduct, involving misappropriation of trust funds, since September 2024. For reasons best known to Mr Mashele, since then, he failed to present a version to this Court. From this Court’s point of view, the complaints of Ms K[...] and the minor child are very serious, since they involve misappropriation of trust funds. It was expected of Mr Mashele to immediately provide an answer to those complaints. Instead, when the LPC supplemented its founding papers in April 2025, Mr Mashele, with due respect to him, cunningly observed a window of an opportunity to seek to delay the finalisation of this application. He did so by submitting an extremely emaciated application seeking a postponement.
- [4] Such an application for postponement was launched on the eve of the hearing of the present application. Wittingly and adroitly, the LPC saw through the cunningness of Mr Mashele and resisted the quest for the postponement of the application. Having listened to argument for and against the eleventh-hour application for postponement, this Court per my brother Mbongwe J swiftly delivered an *ex tempore* ruling on the postponement application. This judgment has nothing further to add to the reasons advanced *ex tempore*. It suffices to comment in passing that counsel for Mr Mashele wittingly conceded that the application was manifestly puny. A postponement of a matter is not there for

the mere taking. Mr Mashele deliberately failed to disclose a relevant factor that he was indulged on two occasions but still failed to provide an answer. He opportunistically attempted to effectively pull wool over the eyes of this Court, when a supplementary affidavit was delivered. To that, he decried prejudice, when he, for almost eight months lied supine.

- [5] Howbeit, in considering the present application, this Court focused on the complaints detailed in the founding affidavit. This Court was far from being impressed by the posture of Mr Mashele to launch the postponement application woefully late with no palpable explanation as to why. Having refused a postponement, the application was considered on the unopposed basis.

Pertinent background facts and evidence

- [6] On 19 June 2001, Mr Mashele was admitted as an attorney of the High Court. On the available evidence, he practices as a sole practitioner. It is not the intention of this Court to suggest that other complaints of misconduct are not serious enough. Taken cumulatively, they are. However, as indicated at the dawn of this judgment, the complaints of Ms K[...] and the minor child are more serious to justify the removal of Mr Mashele from the roll of legal practitioners. It is for that reason that facts pertinent to her complaint are outlined and of necessity form the basis of the decision reached by this Court at the end.
- [7] Concisely, Ms K[...] instructed Mr Mashele to lodge a claim of loss of support against the Road Accident Fund (RAF) on her and the minor child's behalf. Mr Mashele dutifully lodged such a claim. On or about 10 December 2020, the RAF offered to settle the claims of Ms K[...] and the minor child in the amounts of R2 097 214.50 and R698 935 respectively. On 21 May 2021, an amount of R2 796 149.50 was paid by the RAF into the trust account operated by Mr Mashele. Mr Mashele failed to account fully to Ms K[...]. After almost a year, he paid certain amounts to Ms K[...]. Ultimately an amount of R1 200 000.00 was paid to Ms K[...]. The 25% of contingency fees due to Mr Mashele was in the region of about R699 037.37. Having paid out the sum of R1 200 000.00 to Ms

K[...], an amount of around R897 112.13 ought to have remained in the trust account operated by Mr Mashele.

[8] An auditor, appointed by the LPC, after having failed to obtain co-operation from Mr Mashele, obtained financial records from the banking institutions. According to the records submitted by Mr Mashele to the LPC, for the financial year ending 2021 February, the trust creditors of the law firm of Mr Mashele was reflected as R161 046.78. The records so submitted, falsely reflected that the bank account balance equals the reflected trust creditors. The investigations revealed that in truth the bank balance for 2021 was R3013.51. Such suggested a deficit of R158 033.27 based on the trust creditors divulged, but not verified, by Mr Mashele. This picture simply confirms that the amount of R897 112.13 due to Ms K[...] and the minor child has disappeared. For the year 2022, the trust account position depicted a further deficit to the tune of R279 443.52.

[9] Evidence was presented which demonstrated that funds were indiscriminately transferred from the trust account to the business account and the personal account of Mr Mashele held at the First National Bank (FNB). As at 12 June 2021, the trust bank balance was R292.36. It was alleged that an amount of R500 000 was invested and the investor has since met his demise. Similarly, it was also alleged that an amount of R200 000.00 was paid over to the in-laws of Ms K[...]. Her instruction was for Mr Mashele to pay over R200 000 to the in-laws, yet Mr Mashele withdrew, without her instructions, an amount of R300 000 from the trust funds. The additional R100 000 was allegedly for the payment of unexplained party and party costs. For a period of time, Mr Mashele practised without the Fidelity Fund Certificate (FFC).

[10] Based on the above facts, Ms K[...] and the minor child did not receive all the monies due to them and that money is no longer in the trust account operated by Mr Mashele.

Evaluation

[11] This Court departs from the premise that all the allegations detailed by the LPC remain uncontroverted. Mr Mashele spurned an opportunity afforded to him to provide an explanation with regard to the complaints. Given the seriousness of the allegations, it must have dawned on Mr Mashele that his career as a legal practitioner was on the line. Nonchalant, he remained. The approach taken by Mr Mashele is not necessarily uncommon. This Court, witnesses it, in a plethora of applications of this nature. In my considered view, this approach is not only unhelpful to a practitioner, but it is actually a fatigued one ready to be jettisoned at once by practitioners facing serious allegations like misappropriation of trust funds.

[12] The views and or versions of practitioners are invaluable in applications of this nature. Undoubtedly, regard being had to the complaint of Ms K[...] and the minor child alone, the offending conduct has been proven on the balance of probabilities by the LPC as the *custos morum*. It is beyond perspicuous that the funds due to Ms K[...] and the minor child were misappropriated. Having misappropriated trust funds, undoubtedly, Mr Mashele is no longer a fit and proper person to remain on the roll of legal practitioners.

[13] With regard to sanction, the complaint of Ms K[...] and the minor child alone warrants the removal of Mr Mashele from the roll of legal practitioners. The sentiments echoed by the erudite Eksteen JA remain true to this day and apply with equal vigour, if not more, in the present instance. This Court remains bound by those felicitously expressed sentiments.

[14] As indicated earlier, cumulatively, the three complaints detailed in the founding affidavit of the LPC warrants a removal from the roll, particularly in the circumstances where Mr Mashele, for reasons best known to him, failed to take this Court into his confidence. His reticence speaks louder in this regard. In an application of this nature, the LPC is not a complainant.

[15] The members of the public are actually the complainants. It is inappropriate and actually remiss for this Court to allow a person who is not fit and proper to continue to practice as an attorney. The public at large will remain vulnerable.

Accordingly, this Court is constrained to adopt the proposed draft order of the LPC and make it its order.

[16] On account of all the above reasons, I propose to make the following order:

Order

1. The draft order marked X and attached to this judgment is and be made an order of this Court.

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

M MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

(I agree and it is so ordered)

APPEARANCES:

As per the draft order marked X

Date of the hearing: 15 May 2025

Date of judgment: 21 May 2025