



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

CASE NO: 15167/2024

In the matter between:

GAONE JACK SIAMISANG MONTSHOWA N.O.

First Applicant

MORUO WA BENG CONSULTING TRUST

Second Applicant

ESTATE LATE: PK RAMOREI

Third Applicant

and

LEGAL PRACTITIONERS' FIDELITY FUND

First Respondent

LEGAL PRACTICE COUNCIL

Second Respondent

MASTER OF THE HIGH COURT

Third Respondent

Coram: **JONKER AJ**

Heard: 13 August 2025

Delivered: Electronically on 14 August 2025

JUDGMENT

INTRODUCTION

[1] This is an application brought by the first respondent, as executor of the estate of the late PK Ramorei, in terms of which the applicant seeks payment from the first respondent, the Legal Practice Fidelity Fund (“the Fund”) of an amount allegedly representing the balance standing to the credit of the trust account of Kekana Ramorei Incorporated (“the practice”) upon its closure.

[2] The claim arises from the closure of the practice’s trust account and the subsequent distribution of funds therein. The executor alleges that a balance, being trust monies, remains owing to the estate. The amount claimed is said to be distinct from the sum of R2 125 000 already paid to the estate in respect of the practice’s legal fees.

[3] On the eve of the hearing, the applicant’s attorneys filed a “Notice of Removal from the Roll” stating, without more, that the applicant executor had been removed from that capacity by the Master, a decision which is presently under review. No communication was made with the court in relation to the filing of the notice of removal from the roll. The notice was unaccompanied by any affidavit explaining when the executor’s removal occurred, when such removal came to the knowledge of the applicant, or why the matter could not proceed. Notwithstanding the Practice Note indicating that counsel was on brief, counsel appeared at court to state that her mandate had been terminated and that she was unaware she was expected to appear. She sought to be excused.

[4] The Court does not accept that a matter can be unilaterally removed from the roll in this manner. The Court required an appearance on behalf of the applicants attorney at the hearing. An appearance in accordance with the attorneys’ obligations to this Court and the administration of justice in the light of the late delivery of the notice of removal. Upon direction of the court, the plaintiff’s attorneys of record,

contacted the respondent's attorneys, but was met with no response. The Court required an appearance on behalf of the applicants' attorney at the hearing, particularly in light of the fact that they remained on record. An appearance accordance with the attorneys' obligations to this Court and the administration of justice in the light of the late delivery of the notice of removal. This Court is both surprised and dismayed by the brazenness of such conduct, which disregards the orderly management of the court roll and the serious case load under which this Division labours. In light of the fact that this Court was fully prepared, having read the heads of argument, and the first respondent representatives being present, the Court determined to proceed to hear the matter on the merits.

RESPONDENT'S OPPOSITION

[5] The Fund raises, *in limine*, that the executor has relied upon the wrong provision of the Legal Practice Act in formulating the claim. The Fund states that the claim is not based on theft of monies but in fact for monies purportedly held by the Fund in respect of the trust account of the deceased's attorneys practice.

[6] Substantively, the Fund opposes the application on several grounds. First, it is contended that the executor lacks *locus standi* to bring the claim. In terms of section 53(1) of the Legal Practice Act 28 of 2014, monies standing to the credit of a trust account do not form part of the assets of either the attorney or the practice but are held on behalf of the persons for whom they are intended. Accordingly, the executor, acting for the estate of a deceased person, may not claim such monies unless he establishes that the estate itself is the beneficial owner thereof.

[7] Secondly, the Fund asserts that the claim is unsubstantiated. It points out that no claim was lodged by the practice asserting that the trust monies are due to it, and that the executor has not shown any legal basis to claim such monies on behalf of the practice.

[8] Thirdly, the Fund avers that the amount which the executor seeks has already been paid out to another person, namely Ms Lydia Onalenna Manca, pursuant to a conveyancing transaction. Following this, the Fund made an additional payment of

R106 671.68 to Ms Manca. The Fund maintains that no monies remain in respect of the trust account closure, and therefore no further payment can be made to the estate.

ISSUES FOR DETERMINATION

[9] The first *in limine* aspect, that the executor has relied upon the wrong provision of the Legal Practice Act.

[10] The second *in limine* point advanced by the executor in reply concerns the authority and competence of the deponent to the answering affidavit.

[11] The central questions, with regards to the merits, to be determined are: (i) Whether the executor has *locus standi* to claim the monies in question from the Fund; (ii) Whether the estate is entitled to the funds, given the statutory framework regulating trust monies under the Legal Practice Act; (iii) Whether the claim is substantiated in fact and in law.

IN LIMINE

[12] The Fund points out that the provisions dealing with claims in respect of the theft of trust monies are not applicable to the present matter. On the executor's own version, the claim is not based on the misappropriation or theft of funds, but rather on monies allegedly standing to the credit of the trust account at the time of its closure. Such monies fall within the statutory framework governing trust monies generally, and not within the provisions providing for compensation from the Fund in cases of theft.

[13] The *in limine* objection, however, carries little weight. While the Fund is correct that the claim is not framed as one for the theft of trust monies, this is not dispositive of the matter. The Fund's counsel conceded so and proceeded to argue on the merits.

[14] The second *in limine* point advanced by the executor, in reply, concerns the authority and competence of the deponent to the answering affidavit. It is contended that the deponent was neither duly authorised by the Fund to oppose the application nor possessed of personal knowledge of the facts deposed to. This objection is without merit. It is trite that a deponent to an affidavit need not, in every instance, have personal knowledge of all the facts, provided such facts are within the scope of their duties and obtained from records to which they have access. Furthermore, the Fund filed an affidavit which accompanied a minute of a meeting of the Board of the Fund authorising the deponent to represent the Fund which sufficiently establishes both authority and competence. The Court is therefore satisfied that the deponent as the necessary authority.

Locus Standi

[15] Section 53(1) of the Legal Practice Act (the Act) is explicit: trust monies are held on behalf of specific persons and are not the property of the legal practitioner or the practice. Any claim to such monies must be made by, or on behalf of, the person for whom the funds were held. The executor's powers extend to assets belonging to the deceased estate; they do not extend to trust monies that were never the property of the deceased.

Substantiation of the Claim

[16] The nature of the monies that were held by the Fund was trust monies. Trust monies are dealt with specifically in Section 86 and 88 of the Act:

“Trust accounts

86. (1) *Every legal practitioner referred to in section 84(1) must operate a trust account.*

(2) Every trust account practice must keep a trust account at a bank with which the Fund has made an arrangement as provided for in section 63(1)(g) and must deposit therein, as soon as possible after receipt thereof, money held by such practice on behalf of any person.

(3) A trust account practice may, of its own accord, invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose.

(4) A trust account practice may, on the instructions of any person, open a separate trust savings account or other interest-bearing account for the purpose of investing therein any money deposited in the trust account of that practice, on behalf of such person over which the practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity.

(5) Interest accrued on money deposited in terms of this section must, in the case of money deposited in terms of—

(a) subsections (2) and (3), be paid over to the Fund and vests in the Fund; and

(b) subsection (4), be paid over to the person referred to in that subsection:

Provided that 5% of the interest accrued on money in terms of this paragraph must be paid over to the Fund and vests in the Fund.

(6) A legal practitioner referred to in section 84(1) may not deposit money in terms of subsection (2), nor invest money in terms of subsections (3) and (4) in accounts held at a bank which is not a party to an arrangement as provided for in section 63(1)(g), unless prior written consent of the Fund has been obtained.

(7) A legal practitioner referred to in section 84(1) must comply with the terms of an arrangement concluded between a bank and the Fund as provided for in section 63(1)(g).”

(my emphasis)

[17] S86(5)(b) of the Act specifically provides that any interest accrued on money in a trust account vests in the Fund, unless the money is specifically invested on behalf of a particular person in terms of section 86(4). This reinforces the statutory position that funds (and any incidental interest) in the trust account are not part of the estate of the practitioner, and cannot be claimed by a third party such as the executor without proof that such funds were specifically earmarked or invested for the deceased or the estate.

[18] Furthermore, S88 of the Act deals with trust money and property of the trust account practice:

“Trust money and trust property of trust account practice

88. (1) (a) *Subject to paragraph (b), an amount standing to the credit of any trust*

account of any trust account practice—

(i) does not form part of the assets of the trust account practice or of any attorney,

partner or member thereof or of any advocate referred to in section 34(2)(b); and

(ii) may not be attached by the creditor of any such trust account practice, attorney, partner or member or advocate.

(b) Any excess remaining after all claims of persons whose money has, or should have been deposited or invested in a trust account referred to in paragraph (a), and all claims in respect of interest on money so invested, are deemed to form part of the assets of the trust account practice concerned.

(2) Trust property which is registered in the name of a trust account practice, or jointly in the name of an attorney or trust account practice and any other person in a capacity as administrator, trustee, curator or agent, does not form part of the assets of that attorney or trust account practice or other person.”

[19] The executor has not established that the monies in question were held in trust for the deceased or for the estate as required in terms of S88, nor that they were invested in terms of section 86(4) in such a way that the estate would be entitled to it. In the absence of such proof, the executor cannot assert a claim in respect thereof. The payment of R2 125 000 to the estate in respect of the practice’s legal fees is unrelated to the current claim and cannot be relied upon as a basis for further entitlement.

[20] The Fund’s records indicate that the monies formerly held in the trust account were paid to Ms Manca in relation to a claim submitted by her in respect of a conveyancing transaction. Whilst the executor does, in reply, take issue with the fact

that no claim forms were disclosed by the Fund or any proof that the monies were not so paid out, this is not a basis to dispute the lawfulness of the payout. The Legal Practice Council and the Fidelity Fund were the custodians of the accounts, and there is no basis on which to deny that the payout to Ms Manca was irregular or unsubstantiated.

[21] The executor has not provided documentary proof or trust account reconciliation demonstrating that any balance remains payable to the estate. Absent such evidence, the claim cannot be sustained. The monies that was paid into the trust account initially, R2 125 000.00 was duly paid over to the estate. No legal basis exists for the payment of further funds. The trust account had no credit after the payment to Ms Manca. It is common cause that no surplus trust funds were available to the credit of the practice at the time of the claim. On the contrary, the records of the Fund demonstrate that the trust account balance was insufficient to meet Ms Manca's entitlement pursuant to a conveyancing transaction, and the Fund was obliged to pay in an amount of R106 671.68 from its own resources to fully discharge that claim. This factual position is wholly inconsistent with the applicant's assertion that a balance of trust monies remained available to the estate.

CONCLUSION

[22] The applicants have failed to establish: (i) that the estate is the beneficial owner of the trust monies claimed; (ii) that the executor has standing to claim the monies; (iii) That any trust balance remains unpaid and is due to the estate.

[23] The Fund was correct in resisting the claim. The application must accordingly fail.

COSTS

[24] The applicants are ordered to pay the respondent's costs on scale B. While the Court is deeply concerned by the conduct of the applicant's attorneys in filing a unilateral notice of removal from the roll on the eve of the hearing, without explanation or supporting affidavit, without any consent to do so by the first

respondent or with leave of the court, in the absence of any factual averments regarding the circumstances of the executor's removal by the Master and the timing of such removal coming to the knowledge of the applicants and its attorneys, it grants costs in favour of the First Respondent on scale B.

ORDER

The following order is made:

1. The application is dismissed.
2. The applicants are ordered to pay the costs of the application, such costs to be determined on scale B.

E JONKER
ACTING JUDGE OF THE HIGH COURT

Appearances:

For applicants:	No appearance
For first respondent:	Adv G Oliver