



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

NOT REPORTABLE

Case no: 4096/2024

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

ZOLEKA SUSAN PONOANE

Respondent

JUDGMENT

Govindjee J

Introduction

[1] This is an application to have the respondent's name struck from the roll of attorneys, together with ancillary relief. The issues to be decided are whether the respondent's misconduct has been established on a balance of probabilities; whether the respondent is a fit and proper person to continue to practise as an attorney; whether the respondent's name should be struck from the roll of attorneys and the appropriate costs order.

Background

[2] The misconduct complained of occurred in the Regional Magistrate's Court, Sterkspruit, during 2012. The respondent represented various plaintiffs in an action against the Minister of Police (the Minister) based on alleged assaults, unlawful arrests and detentions. The presiding magistrate, who is now deceased, reserved judgment. The magistrate's explanation of what transpired thereafter emerges from a warning statement made to the police pursuant to a charge of corruption:¹

'... I made the judgment in the matter in question myself on 26 November 2012 and I gave it to Miss Vuthu to type. After the judgment was typed it was brought to me and I read it through. When I was satisfied by the content I then signed it (judgment) and I later faxed it to Mrs Ponoane, the attorney of the plaintiffs on 27 November 2012. I wish to add that my judgment was in favour of Mrs Ponoane or the plaintiffs...

Later on, I am not sure about the date, Mrs Ponoane phoned me to confirm receipt of the judgment. On the day Mrs Ponoane phoned me she also raised the format in which my judgment was written. She further informed me that there was a better format that she had seen from a certain advocate with whom she handled another civil matter. Mrs Ponoane and myself agreed that she was to rewrite my judgment, meaning the same judgment I already gave her, in the same manner she had seen without altering the content of my judgment...

On 30 November 2012 I received a copy of the judgment that Mrs Ponoane had re-written for me. That judgment was sent by fax to Lady Grey Magistrates Court when I do magisterial work every Thursday of the week. Upon receiving the judgment from Mrs Ponoane I read it through and I was interested by the format in which it was written. When I was satisfied I signed the judgment from Mrs Ponoane...

¹ See *Minister of Police v Vowana and Another* [2019] ZAECHMHC 5; [2019] 2 All SA 172 (ECM); 2019 (4) SA 297 (ECM); 2019 (2) SACR 148 (ECM) (*Vowana*) para 28.

On 04 December 2012 I caused Mr Sipamla, a senior interpreter at Sterkspruit Magistrate's Court to fax the same judgment back to Mrs Ponoane. I kept the fax that I received from Mrs Ponoane in my office for future reference...

There was no favour or benefit of any kind to anybody in the process.'

[3] The respondent sought to enforce the judgment during April 2013. Having become aware of what had transpired, the Minister launched a review to set aside the judgment during 2014, citing both the magistrate and the respondent as parties to the proceedings. Both were represented by the respondent's firm when the application was opposed. The outcome of those proceedings has been reported in various law reports (the review judgment).² Of relevance for present purposes is the outcome, including review of the proceedings before the magistrate and referral to the applicant to investigate the conduct of the respondent.

[4] The respondent launched an application for leave to appeal the review judgment, alleging bias and / or a conflict of interest on the part of the presiding judges. It is appropriate to quote from the judgment refusing leave to appeal to contextualise the respondent's allegations at the time:

'...These allegations of bias on our part are cast in wild terms, bereft of any factual material and are more of an attack on our integrity as judicial officers without any factual basis for the alleged bias, actual or potential...

We do not consider it necessary to respond to these wild allegations nor have we been able to do so which are at best, speculative and are made without any attempt to provide a simple factual basis. They are, in any event, factually incorrect...

This style of litigation is more indicative of the applicant, who herself is an attorney, having been ill advised by her attorneys and counsel, who had no difficulty in lending their name to a direct attack on our integrity as judicial officers and are happy to have us slighted without any factual basis...It is even difficult to resist the feeling that had this Court found in favour of the

² Vowana above n1.

applicant none of these very reckless allegations would have been made hence the inexplicable failure to apply for our recusal at the hearing of the main application...

It is even shocking that the said plaintiffs' attorney [the respondent] who now applies for leave to appeal has no compunction whatsoever in maintaining that there was nothing wrong with her conduct...

During the hearing of the application [respondent's counsel] initially conceded that the conduct of the magistrate and the [respondent] was unlawful. He later made a belated attempt to withdraw the concession and recharacterised their conduct as having been merely procedurally incorrect as against being unlawful ... We simply do not understand how it could not be unlawful and unconstitutional for a legal representative of one of the litigants to secretly usurp the authority of judicial officers by contributing to the outcome of the case through a contribution in formulating the reasons for the said outcome ...'.

[5] The conduct of the respondent was considered by the Investigating Committee of the Eastern Cape Legal Practice Council, which recommended that the Respondent be summonsed to appear before its Disciplinary Committee. The disciplinary hearing was convened during October 2023. The respondent conducted her own defence and pleaded not guilty to charges of failing to maintain the highest ethical standards of honesty and integrity by amending and or altering the judgment without the knowledge of the opposing legal representative; bringing the legal profession into disrepute, as evidenced by the review proceedings and criminal charges; and failure to take reasonable steps to avoid and prevent any reasonable suspicion arising that her integrity was compromised. Having found the respondent guilty as charged, the Disciplinary Committee recommended that the applicant apply to this court for an order striking the respondent's name from the roll of attorneys.

The facts

[6] There are three major difficulties in the version presented by the respondent in opposing this application. Firstly, that version of events differs in notable respects from that of the magistrate, as reflected in the review judgment. According to the

respondent, she questioned why the judgment she had received had been of such poor quality. Embarrassed, the magistrate requested a precedent so that the judgment could be restructured. Having discussed the judgment received informally, including its structure and the defective order issued, the magistrate addressed the respondent as follows:

‘How would you have written the judgment, using the same facts, findings and conclusion? Can you please help me, with an example of the way in which it should be done?’

[7] It is readily apparent that this version is at odds with the magistrate’s explanation that he and the respondent had agreed that she would rewrite his judgment. The reviewing court accepted the magistrate’s version of events on this aspect,³ as does this court. A template, example or precedent is wholly distinct from a re-write. The magistrate’s explanation is also supported by what transpired after the re-write had been received: it was adopted by the magistrate as is, signed and returned to the respondent, who attempted to enforce the judgment a few months later.

[8] Secondly, the respondent avers that she did not appreciate that the magistrate would simply sign the document and issue it as his judgment, without ‘brushing up on it further’. As a result, she suggests that she contacted the magistrate immediately upon receipt of the signed document and asked:

‘Why did you sign my copy – you were meant to utilise this as a precedent and compile your own judgment?’

[9] It is unclear what the respondent’s argument is in this regard. The magistrate had compiled his own judgment, only to be criticised by the respondent and advised that ‘if Judges in the High Court saw this they would pounce on you, as I consider that a Magistrate of ten years should be able to write a better judgment’. Furthermore, the respondent, on her own version, was told that this was the

³ *Vowana* above n1 paras 26, 27.

magistrate's very first written judgment. The document had been provided to the magistrate following discussions which had emphasised the inadequacy of his original document. He had consequently formulated his request to her specifically to encompass the use of the same facts, findings and conclusion. Considering the circumstances, the respondent must have foreseen that her document would likely be adopted by the magistrate, with or without minor changes. In any event, having received a signed document which was identical to what she had provided, the respondent subsequently sought to enforce the judgment without demur. The suggestion that she had expected the magistrate to compile his own judgment upon receipt of her document may safely be rejected considering the other available evidence. Instead, as the review court held, the magistrate and respondent agreed that she would write the final judgment.⁴

[10] Thirdly, the respondent maintains that she had been careful to ensure that her document was faithful to the gist of the findings and conclusions of the magistrate in all respects, and that she had only fleshed out the magistrate's 'skeleton' by 'assisting with the format which I considered more appropriate' and with 'presentation'. Reference is made to the type spacing being wider / broader and the type of font being bigger, coupled with the addition of headings and additional paragraphs, which resulted in the corresponding increase in the number of pages. It may be noted that both the magistrate's document and that provided by the respondent had reflected that the claim for assault was dismissed, and both rejected Warrant Officer Magidela's evidence that the life of a victim had been endangered.

[11] What the respondent chooses to downplay is that her amplification went far beyond formatting or presentation. It included, for example, the addition of supposedly relevant case law. As the review judgment made clear, the difference between the two documents was pronounced in respect of the reasons provided for the 'order'.⁵ Significantly, the 'orders' reflected were also substantively distinguishable. The magistrate's document ordered that:

⁴ Vowana above n1 para 26.

⁵ Vowana above n1 para 35.

- ‘1. Claim by plaintiffs are successful.
2. Quantum claimed by each plaintiff are hereby awarded as such (sic).
3. Interest awarded as claimed.’

By contrast, the respondent’s document concluded as follows:

‘The following order is made:

1. Defendant is ordered to pay the plaintiffs as follows:

SAKHELE MALIWA	R50 000.00
BENJAMIN NGOGODO	R80 000.00
THEMBA DADA	R60 000.00
NKOSI – AYISIKIZWA MVUMVU	R60 000.00

2. Interest on on the capital amount at the rate of 15,5% (sic);
3. Defendant is ordered to pay the plaintiffs costs of action and costs to include preparation costs, refresher fee and travelling costs with interests thereon at a prescribed rate from 14 days of the date of taxation to date of final payment.’ (sic)

[12] It is immediately apparent that the respondent included a detailed order as to costs, either for her own benefit or that of her clients, in circumstances where the magistrate had made no costs order. Deeper scrutiny of her document reveals that the amount awarded to plaintiff Dada was R60 000.00 in circumstances where his claim, as amended, was for R50 000.00. In addition, the respondent had no compunction in stipulating the full figures (or, in the case of Dada, more than the figure) that had been claimed, despite the assault claim having been dismissed. The respondent’s suggestion that she had stayed true to the magistrate’s judgment must, for all these reasons, be rejected. Had the true situation not been discovered, the Minister would have been prejudiced by being saddled with a judgment granting relief in excess of what the magistrate had contemplated prior to his engagement with the respondent. The suggestion that no one was benefitted or prejudiced is unsupported by the objective facts.

[13] All these dimensions of the respondent’s version are apparent from the papers and stand in stark contrast to the submission that the respondent has at no time denied the conduct complained about. In fact, the respondent has consistently

denied any wrongdoing, as reflected in the record of proceedings before the applicant's disciplinary committee and during the review, culminating in the outrageous allegations of bias levelled against two judges of this Division.

The relevant legal principles

[14] The central question for consideration is whether the respondent is a fit and proper person to practise law.⁶ The test has been formulated as follows:⁷

‘First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. Second, the court must consider whether the person concerned “in the discretion of the court” is not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. And third, the court must inquire whether in all the circumstances the attorney is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.’

[15] The second and third legs of the test are both in the discretion of this court. The focus of the second leg is on the nature of the conduct complained of, in comparison to what is expected of an attorney, whereas the third, which is ultimately a question of degree, includes consideration of what the proven conduct reflects upon the person's character, whether it shows them to be unworthy to remain in the ranks of an honourable profession, the likelihood or question of a repetition and the need to protect the public.⁸ As to the third leg, the remarks of Harms ADP in *Malan and Another v Law Society, Northern Provinces*, are apposite:⁹

⁶ S 24(2)(c) of the Legal Practice Act, 2015 (Act 28 of 2015) (the Act).

⁷ *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) para 10.

⁸ *Malan and Another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) paras 5, 6.

⁹ *Malan* above n8 paras 7–9 (references omitted).

[7] First, in deciding on whichever course to follow the court is not first and foremost imposing a penalty. The main consideration is the protection of the public.

[8] Second, logic dictates that if a court finds that someone is not a fit and proper person to continue to practise as an attorney, that person must be removed from the roll. However, the Act contemplates a suspension. This means that removal does not follow as a matter of course. If the court has grounds to assume that after the period of suspension the person will be fit to practise as an attorney in the ordinary course of events it would not remove him from the roll but order an appropriate suspension. In this regard the following must be borne in mind:

The implications of an unconditional order removing an attorney from the roll for misconduct are serious and far-reaching. *Prima facie*, the Court which makes such an order visualises that the offender will never again be permitted to practise his profession because ordinarily such an order is not made unless the Court is of the opinion that the misconduct in question is of so serious a nature that it manifests character defects and lack of integrity rendering the person unfit to be on the roll...

[9] Third, the exercise of this discretion is not bound by rules, and precedents consequently have a limited value. All they do is to indicate how other courts have exercised their discretion in the circumstances of a particular case. Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a court were bound to follow a precedent in the exercise of its discretion it would mean that the court has no real discretion.'

[16] It may be emphasised that, at the third stage of the enquiry, the function of the court is primarily to protect the public rather than punish the respondent.¹⁰ The proper approach is not to weigh the various factors for the purpose of finding an appropriate punishment, as a criminal court does when passing sentence, but rather to determine whether, or if appropriate when, an attorney should be permitted to continue in practice.¹¹ While dishonesty has been held not to be a necessary

¹⁰ *Botha and Others v Law Society, Northern Provinces* 2009 (3) SA 329 (SCA) para 22.

¹¹ *Law Society of the Cape of Good Hope v Peter* [2006] ZASCA 37; 2009 (2) SA 18 (SCA) para 28 as cited in *Legal Practice Council v Rubushe* [2023] ZASCA 167 (*Rubushe*) para 26.

precursor to an order of striking off, it is only in exceptional circumstances that a court will order a suspension instead of striking-off where dishonesty has been established.¹²

[17] It is important to appreciate that fulfilment of the court's disciplinary function, when faced with an application brought in order to highlight a legal practitioner's misconduct, in the interests of the court, the profession and the public at large, requires a different approach to that outlined in *Plascon-Evans*¹³ in order to properly establish the facts.¹⁴ It is permissible for the court to have regard to the totality of the respondent's conduct and the cumulative effect thereof in deciding the matter.¹⁵ Furthermore, attorneys in the position of the respondent are expected to co-operate and provide all necessary information so that the full facts are placed before the court to enable it to make a correct and just decision.¹⁶

'By reason of the *sui generis* nature of the proceedings, this would require a full and frank disclosure of all material information so as to allow the court to make a proper and informed decision. There is no room for an attorney who wishes to remain on the roll to be coy about material facts in a matter of this nature. As officers of the court, attorneys are at all times expected to be scrupulously honest and observe the utmost good faith in their dealings with the court, even if it means disclosing information which may be adverse to their own interests, and this rule applies equally in applications to strike them off.'

[18] The SCA has commented on instances where a practitioner adopts a strategy, which is itself unprofessional, of failing to deal with the issues fully and openly from the outset, so that the truth emerges only gradually, coupled with defences being raised in a manner that does not evince complete honesty and integrity. Persistent denial of misconduct, where the facts reveal the contrary, has

¹² *Hewetson v Law Society of the Free State* 2020 (5) SA 86 (SCA).

¹³ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 (A) at 634E–635D.

¹⁴ *Van der Berg v General Council of the Bar of SA* [2007] 2 All SA 499 (SCA) para 2.

¹⁵ *General Council of the Bar of South Africa v Matthys* 2002 (5) SA 1 (E) para 36.

¹⁶ *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853, as cited in judgment of Leach JA in *Hewetson* above n12 paras 44, 49.

been held to constitute a lack of understanding of one's own conduct, demonstrating that it cannot be assumed that a period of suspension will contribute to the result of a fit and proper person able to continue practice as an attorney.¹⁷

Analysis

[19] It is accepted that the offending conduct alleged by the applicant has been proved on a preponderance of probabilities. This is readily apparent from the papers, as well as the review judgment, and is uncontested by the respondent. The real question is whether that conduct merits the ultimate sanction, or whether any alternative to an order striking the respondent from the roll is warranted.

[20] The proven misconduct falls markedly short of the conduct expected of an attorney. Far from maintaining the highest ethical standards of honesty and integrity, the respondent engaged with the magistrate at the culmination of contested legal proceedings in a manner that ignored the rights of the other party and resulted in a judgment different to what the magistrate had originally intended. What occurred was described in the review judgment as 'unprecedented in the annals of the judiciary in the country'.¹⁸ The role played by the respondent brought the legal profession into disrepute and created the reasonable suspicion that her integrity was compromised. The nature of the conduct is such that, when weighed against the expected conduct, it is apparent that the respondent is not a fit and proper person to continue to practise as an attorney.

[21] The remaining question is whether in all the circumstances the respondent is to be removed from the roll, or whether an order of suspension from practice would suffice. This is a question of degree and involves consideration of the various factors listed in *Malan*. Having commented on the nature of the proven misconduct, it is necessary to add that this raises serious questions about the respondent's character and suggests that she is unworthy to remain in the ranks of the profession. While it is accepted that it is highly unlikely that a member of the judiciary will ever again permit

¹⁷ *Law Society of the Northern Provinces v Sonntag* 2012 (1) SA 372 (SCA) para 18.

¹⁸ *Vowana* above n1 para 1.

such interference in the performance of a judicial function, there is a need to protect the public from practitioners conducting themselves in such a manner. In coming to this conclusion, I am mindful that the consequences for the respondent are dire. Regrettably, the serious character defects and lack of integrity revealed by the respondent's interactions with the magistrate, in the absence of the other party to the proceedings, are reinforced by what has transpired subsequently.

[22] Although the incident arose many years ago, and despite the respondent continuing to practise since that time without blemish, it cannot be said that there is genuine remorse which counts in her favour. The various attempts to gloss over her actions, including the persistent denial of wrongdoing during both the review application and disciplinary proceedings are indicative of someone who experiences regret, not genuine remorse. The SCA has held that the following considerations with regards to the difference between the two apply to legal practitioners who are guilty of misconduct:¹⁹

‘There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful or simply feeling sorry for himself or herself after having been caught, is a factual question.’

[23] In this matter, there is no moral anguish on the part of the respondent about the harm that she has caused. In fact, in reflecting on her conduct, the respondent focuses on the negative consequences and impact that the sanction will have on her, instead of the harm her conduct has caused to the legal profession and the judicial process. Bearing that in mind, the apologies now tendered to members of the profession and Bench are belated and unconvincing evidence of true contrition. It is

¹⁹ *Johannesburg Society of Advocates and Another v Nthai and Others* 2021 (2) SA 343 (SCA) para 82 quoting *S v Matyityi* 2011 (1) SACR 40 (SCA); [2010] ZASCA 127 para 14.

likely that the change of heart has been provoked by the desire to avoid being struck off.

[24] Rather than making a full and frank disclosure from the outset, the respondent continued to adopt a response reflective of a lack of appreciation of the severity of her misconduct. The respondent's conduct, including her attempts to minimise the extent of her misconduct, reflects an element of dishonesty, as is evident from the findings of fact detailed above.

[25] The respondent requested that this court considers imposing a fine or a limited suspension from practice. Considering the seriousness of the respondent's misconduct, a fine is not an appropriate sanction. Furthermore, a respondent opposing a striking off application, who seeks a sanction of suspension from practice, should assist the court to formulate conditions of suspension.²⁰ Despite seeking a suspension from practice, the respondent has not identified any appropriate conditions of suspension. In any event, in the present circumstances, an order suspending the respondent from practice, as opposed to striking, is inappropriate.²¹

[26] There are no exceptional circumstances to order any sanction other than a removal from the roll of attorneys. The applicant has made out a proper case for the relief sought, including an award of costs on the attorney client scale.

Order

[27] The draft order attached hereto and marked 'A' is made an order of court.

A GOVINDJEE
JUDGE OF THE HIGH COURT

²⁰ *Malan* above n8 para 8.

²¹ See *Rubushe* above n11.

I agree.

G APPELS
ACTING JUDGE OF THE HIGH COURT

Heard: 31 July 2025
Delivered: 5 August 2025

Appearances:

For the Applicant:	Adv KL Watt
Instructed by:	Wheeldon Rushmere & Cole

For the Respondent:	Mr D Mili
Instructed by:	Mili Attorneys 110 High Street Makhanda

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO: 4096/2024

**BEFORE THE HONOURABLE JUSTICE GOVINDJEE AND ACTING JUSTICE
APPELS**

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

ZOLEKA SUSAN PONOANE Respondent

DRAFT ORDER

Having heard Ms Watt, for the Applicant, and Mr Cole SC, for the Respondent, the following order is made:

1. The Respondent's name is struck from the roll of legal practitioners of this Honourable Court.
2. The Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court her certificate of enrolment as a legal practitioner of the Honourable Court.
3. In the event of the Respondent failing to comply with paragraph 2 of this order, within 14 days of this order being served on her, the sheriff be and is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.
4. The Respondent is interdicted and prohibited from handling or operating on the trust accounts registered in her or her firm's name.

5. The Director/Acting Director of the Eastern Cape Legal Practice Council or Nominee of the Applicant be appointed as the *Curator Bonis* to administer and control the trust accounts of the Respondent, and any accounts relating to insolvent and deceased estates and any deceased estate and any estate under Curatorship connected with the Respondent's practice as attorney and including, also, the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of Section 86(1) of the Legal Practice Act 28 of 2014 ("LPA") and/or any separate savings or interest-bearing accounts as contemplated by Section 86(3) and/or Section 86(4) of the LPA, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited ("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 in relation to her practice as a legal practitioner and 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 Respondent was acting at the date of this order;
- 5.2. where monies have been paid incorrectly and unlawfully transferred from the 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 Respondent in respect of monies held, received and/or invested by the Respondent in terms of Section 86(1) and/or Section 86(3) and/or Section 86(4) of the LPA ("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 ("trust creditors") and to call upon the Respondent to furnish him/her, within 30 (thirty) days of the date of service of this order or such further period as he/she may agree to in writing, with the names and addresses of and the amounts due to all trust creditors;
- 5.4. to call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require to enable him/her to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondent and, if so, the amount of such claim;
- 5.5. except where a trust deficit is determined, to admit or reject, in whole or in part, subject to the approval of the Legal Practitioners' Fidelity Fund ("LPFF") Board, the claims of any such trust creditor, without prejudice to such trust creditor's right of access to the civil courts;
- 5.6. having determined the amounts which he/she considers are lawfully due to trust creditors, to pay such claims in full, but subject to the approval of the LPFF Board;
- 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 interest due to the LPFF in terms of Section 86(5) of the LPA, secondly any, curatorship fees and disbursements and costs and expenses payable by the Respondent in terms of this order and thirdly to pay such balance to the Respondent, or duly authorised representative/trustee/executor subject to the terms contained in this order;
- 5.8. in the event of there being a trust deficit in the trust banking account(s) of the Respondent, in accordance with the available documentation and information, to pay the available balance in the trust banking account(s) of the Respondent to the LPFF;

- 5.9. to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him/her in carrying out his/her duties as Curator; and
 - 5.10. to render from time to time, as Curator, returns to the Applicant showing how the trust account(s) of the Respondent have been dealt with.
6. The Respondent shall immediately deliver her said accounting records, records, files and documents containing particulars and information relating to:
- 6.1. any monies received, held or paid by the Respondent for or on account of any person while practising as an attorney;
 - 6.2. any monies invested by the Respondent in terms of Section 86(3) and/or Section 86(4) of the LPA;
 - 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 Property Control Act, No 57 of 1988;
 - 6.7. any company liquidated in terms 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, No 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and
 - 6.9. the Respondent's practice as an attorney of this Honourable Court, to the Curator appointed in terms of this order, provided

that, as far as such accounting records, records, files and documents are concerned, the Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such Curator or his/her nominee.

7. Should the Respondent fail to comply with the provisions of the paragraph 6 of this order, within 14 days of the service of the order on her, 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 Respondent be and is hereby removed from office as:
 - 8.1. 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) thereof;
 - 8.2. 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;
 - 8.3. trustee of any insolvent estate in terms of Section 59 of the Insolvency Act, No 24 of 1936;
 - 8.4. liquidator of any company in terms of Section 379(2) read with 379(e) of the Companies Act, No 71 of 2008;
 - 8.5. trustee of any trust in terms of Section 20(1) of the Trust Property Control Act, No 57 of 1988;
 - 8.6. liquidator of any close corporation appointed in terms of Section 74 of the Close Corporations Act, No 69 of 1984; and
 - 8.7. administrator appointed in terms of Section 74 of the Magistrates' Court Act, No 32 of 1944.
9. The Curator shall be entitled to:
 - 9.1. hand over to the persons 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 Respondent or her firm;

- 9.2. require claimants to provide any documentation or information which the Curator may consider relevant in respect of a claim or possible or anticipated claim, against the Curator and/or Respondent and/or Respondent's clients and/or fund in respect of money and/or other property entrusted to the Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
 - 9.3. publish this order on an abridged version thereof in any newspaper he/she considers appropriate; and
 - 9.4. close the Respondent's practice insofar it relates to the client files, records and trust accounts.
10. 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 her in respect of her former practice, and should she fail to do so, she shall not be entitled to recover such fees and disbursements from the Curator without prejudice, however, to such rights (if any) as she may have against the trust creditor(s) concerned for payment or recovery thereof.
11. A bill of costs shall drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court *mutatis mutandis* as if the Curator and the responsible officials of the Applicant in discharging their duties as contemplated in this order had acted as attorneys, shall constitute proof of their reasonable fees and disbursements ("the Curatorship fees and disbursements") and that the Registrar be authorised to issue a writ of execution for payment thereof by the Respondent.
12. The Curatorship will terminate when the Curator receives a final written discharge from such duties from the Applicant consequent upon the Curator filing with the Applicant a final report and account, together with supporting vouchers, in respect of the execution of the Curator's duties in terms of this order.

13. The Respondent is hereby ordered:
- 13.1. to pay, in terms of Section 87(2)/37(2)(a) of the LPA, the reasonable costs of the inspection/investigation of the accounting records of the Respondent;
 - 13.2. to pay the reasonable Curatorship fees and disbursements;
 - 13.3. to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
 - 13.4. to pay the costs of this application on an attorney and client scale, including the costs of counsel on scale B as envisaged in Rule 69(7) read with Rule 67A(3).

BY ORDER OF COURT

THE REGISTRAR

Wheeldon Rushmere & Cole Inc.

ANNEXURE “A”

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO: 4096/2024

**BEFORE THE HONOURABLE JUSTICE GOVINDJEE AND ACTING JUSTICE
APPELS**

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

ZOLEKA SUSAN PONOANE

Respondent

DRAFT ORDER

Having heard Ms Watt, for the Applicant, and Mr Cole SC, for the Respondent, the following order is made:

14. The Respondent's name is struck from the roll of legal practitioners of this Honourable Court.
15. The Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court her certificate of enrolment as a legal practitioner of the Honourable Court.
16. In the event of the Respondent failing to comply with paragraph 2 of this order, within 14 days of this order being served on her, the sheriff be and is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.

17. The Respondent is interdicted and prohibited from handling or operating on the trust accounts registered in her or her firm's name.
18. The Director/Acting Director of the Eastern Cape Legal Practice Council or Nominee of the Applicant be appointed as the *Curator Bonis* to administer and control the trust accounts of the Respondent, and any accounts relating to insolvent and deceased estates and any deceased estate and any estate under Curatorship connected with the Respondent's practice as attorney and including, also, the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of Section 86(1) of the Legal Practice Act 28 of 2014 ("LPA") and/or any separate savings or interest-bearing accounts as contemplated by Section 86(3) and/or Section 86(4) of the LPA, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited ("the trust accounts"), with the following powers and duties:
 - 18.1. immediately to take possession of the Respondent's accounting records, records, files and documents in relation to her practice as a legal practitioner and 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 Respondent was acting at the date of this order;
 - 18.2. where monies have been paid incorrectly and unlawfully transferred from the 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 Respondent in respect of monies held, received and/or invested by the Respondent in terms of Section 86(1) and/or Section 86(3) and/or Section 86(4) of the LPA ("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);

- 18.3. 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 ("trust creditors") and to call upon the Respondent to furnish him/her, within 30 (thirty) days of the date of service of this order or such further period as he/she may agree to in writing, with the names and addresses of and the amounts due to all trust creditors;
- 18.4. to call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require to enable him/her to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondent and, if so, the amount of such claim;
- 18.5. except where a trust deficit is determined, to admit or reject, in whole or in part, subject to the approval of the Legal Practitioners' Fidelity Fund ("LPFF") Board, the claims of any such trust creditor, without prejudice to such trust creditor's right of access to the civil courts;
- 18.6. having determined the amounts which he/she considers are lawfully due to trust creditors, to pay such claims in full, but subject to the approval of the LPFF Board;
- 18.7. 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 interest due to the LPFF in terms of Section 86(5) of the LPA, secondly any, curatorship fees and disbursements and costs and expenses payable by the Respondent in terms of this order and thirdly to pay such balance to the Respondent, or duly authorised representative/trustee/executor subject to the terms contained in this order;
- 18.8. in the event of there being a trust deficit in the trust banking account(s) of the Respondent, in accordance with the available

documentation and information, to pay the available balance in the trust banking account(s) of the Respondent to the LPFF;

18.9. to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him/her in carrying out his/her duties as Curator; and

18.10. to render from time to time, as Curator, returns to the Applicant showing how the trust account(s) of the Respondent have been dealt with.

19. The Respondent shall immediately deliver her said accounting records, records, files and documents containing particulars and information relating to:

19.1. any monies received, held or paid by the Respondent for or on account of any person while practising as an attorney;

19.2. any monies invested by the Respondent in terms of Section 86(3) and/or Section 86(4) of the LPA;

19.3. any interest on monies so invested which was paid over or credited to the Respondent;

19.4. 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;

19.5. 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;

19.6. any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act, No 57 of 1988;

19.7. any company liquidated in terms of the Companies Act, No 71 of 2008, administered by the Respondent as or on behalf of the liquidator;

19.8. any close corporation liquidated in terms of the Close Corporations Act, No 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

- 19.9. the Respondent's practice as an attorney of this Honourable Court, to the Curator appointed in terms of this order, provided that, as far as such accounting records, records, files and documents are concerned, the Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such Curator or his/her nominee.
20. Should the Respondent fail to comply with the provisions of the paragraph 6 of this order, within 14 days of the service of the order on her, 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.
21. The Respondent be and is hereby removed from office as:
- 21.1. 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) thereof;
- 21.2. 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;
- 21.3. trustee of any insolvent estate in terms of Section 59 of the Insolvency Act, No 24 of 1936;
- 21.4. liquidator of any company in terms of Section 379(2) read with 379(e) of the Companies Act, No 71 of 2008;
- 21.5. trustee of any trust in terms of Section 20(1) of the Trust Property Control Act, No 57 of 1988;
- 21.6. liquidator of any close corporation appointed in terms of Section 74 of the Close Corporations Act, No 69 of 1984; and
- 21.7. administrator appointed in terms of Section 74 of the Magistrates' Court Act, No 32 of 1944.
22. The Curator shall be entitled to:
- 22.1. hand over to the persons 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 Respondent or her firm;

- 22.2. require claimants to provide any documentation or information which the Curator may consider relevant in respect of a claim or possible or anticipated claim, against the Curator and/or Respondent and/or Respondent's clients and/or fund in respect of money and/or other property entrusted to the Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
 - 22.3. publish this order on an abridged version thereof in any newspaper he/she considers appropriate; and
 - 22.4. close the Respondent's practice insofar it relates to the client files, records and trust accounts.
23. 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 her in respect of her former practice, and should she fail to do so, she shall not be entitled to recover such fees and disbursements from the Curator without prejudice, however, to such rights (if any) as she may have against the trust creditor(s) concerned for payment or recovery thereof.
24. A bill of costs shall drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court *mutatis mutandis* as if the Curator and the responsible officials of the Applicant in discharging their duties as contemplated in this order had acted as attorneys, shall constitute proof of their reasonable fees and disbursements ("the Curatorship fees and disbursements") and that the Registrar be authorised to issue a writ of execution for payment thereof by the Respondent.
25. The Curatorship will terminate when the Curator receives a final written discharge from such duties from the Applicant consequent upon the Curator filing with the Applicant a final report and account, together with

supporting vouchers, in respect of the execution of the Curator's duties in terms of this order.

26. The Respondent is hereby ordered:

- 26.1. to pay, in terms of Section 87(2)/37(2)(a) of the LPA, the reasonable costs of the inspection/investigation of the accounting records of the Respondent;
- 26.2. to pay the reasonable Curatorship fees and disbursements;
- 26.3. to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 26.4. to pay the costs of this application on an attorney and client scale, including the costs of counsel on scale B as envisaged in Rule 69(7) read with Rule 67A(3).

BY ORDER OF COURT

THE REGISTRAR

Wheeldon Rushmere & Cole Inc.