REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

- REPORTABLE: ~~YES~~/NO
- OF INTEREST TO THE JUDGES: ~~YES~~/NO
- REVISED.

DATE 28/07/25 SIGNATURE [redacted]

COURT CASE NO. 264/2023

In the matter between:

LIMPOPO PROVINCIAL COUNCIL OF THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL	**APPLICANT**
AND	
ADV PIETER JOHANNES VAN EEDEN	**RESPONDENT**

JUDGEMENT

Introduction

1. The Limpopo Provincial Council of the South African Legal Practice Council ("the Applicant or LPC") brought an urgent application on the 21st February 2023 in terms of Rule 6 (12) of the Uniform Rules of Court of South Africa, as amended on the 01 July 2019 (the rules).
2. In brief the Applicant requests the following orders against Advocate Pieter Johannes Van Eeden ("the Respondent");
   - 2.1. That the Respondent, be suspended in terms of Section 43 of the Legal Practice Act 28 of 2014 ("the Act") for a period of 18 (eighteen) months or such period as the Honourable Court may deem to be Justified, from Practicing as an Advocate of this Honourable Court;
   - 2.2. That the Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court his certificate of enrolment as an advocate of this Honourable Court;
   - 2.3. That during the period of suspension the Respondent is prohibited from handling or operating on his trust accounts and practice accounts;
   - 2.4. That the Director of the Limpopo Provincial Office of the Legal Council, Khomotso Matsaung, or any person nominated by her, be appointed as curator bonis (curator) to administer and control the trust account of the Respondent and immediately to take possession of the Respondent's

accounting records, files and documents and subject to the approval of the board of control of the Legal Practitioners Fidelity Fund;

2.5 That the Respondent immediately deliver his accounting records, files and documents containing particulars and information relating to any monies received, held or paid by the Respondent to account of any person while practicing as a trust advocate. The Respondent must also indicate the funds which he invested in terms of Section 86 of the Legal Practice Act of 2014 and disclose the interest thereof; and

2.6 That the Respondent must be removed to any office that he might have occupied as a curator of any estate in terms of section 54(1)(a)(v) of the Administration of Estate Act, No 66 of 1965, as a guardian of a minor in terms of section 72(1) read with section 54(1)(1)(v) and section 85 of the same Act, or as a trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936, as a liquidator of any company in terms of section 379(2) read with 379 of the Companies Act, No 61 of 1973, as a Trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988, as a Liquidator of any Close Corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and as an Administrator appointed in terms of section 74 of the Magistrates Court Act, No 32 of 1944.

3 The Respondent opposed the abovementioned application by serving and filling his notice of intention to oppose dated the 23rd January 2023. The Respondent further served and filled his answering affidavit dated 06 February 2023.

4 On the 21st February 2023 the matter did not proceed but removed from an urgent roll by agreement between the parties. Subsequent thereof the Applicant served and filled the replying affidavit dated the 27th March 2023.

5 The matter was in a special roll on the 25th April 2025. Before the matter was heard the Respondent raised point *in limine* and indicated that this application is flawed and ultra vires because the LPC did not follow the correct procedure in their investigation. The court dismissed the point *in limine* after the court found that the LPC followed the right procedure in terms of the Act when investigating the matter. The matter was heard by this Court, thereafter, the Judgment was reserved.

Background.

6 The background facts of this matter are common cause. On the 21 July 2022, the complainant Mr Albert Le Roux in his capacity as a Trustee of Schoonlaagte Trust ("the trust"), lodged a complaint to the Applicant against the Respondent. The complaint was pursuant to the amount of R12 000 000.00 which the Respondent had received in his FNB Trust Account on behalf of the trust but the Respondent misappropriated the said amount. The Respondent was supposed to have paid the amount of R12 000 000.00 into the Trust's trust account after the Farm being sole asset of the Trust registered under Title deed; 21567/1988 was sold for an amount of R12 000 000.00. The

Settlement Agreement of this sale was made an Order of Court as per the Court Order of the above Honourable Court under Case Number 8067/2017. This was paid in two instalments, on the 12 June 2022 an amount of R8 000 000.00 was paid and on 24 June 2022 the amount of R4 000 000.00 was also paid.

7 The Trustees of the Trust approached the Court with an urgent motion proceeding to compel the Respondent to effect the said payment. On the 27th September 2022 the urgent court ordered the Respondent to effect payment within 24 hours. The Trustees of the Trust requested the Respondent that he should pay the abovementioned amount into the Trust's trust account but the Respondent failed to do so despite the court order. The said court order has stipulated the bank account in which the Respondent should transfer the amount of R 12 000 000.00 due to the Trust, however the Respondent indicated that he cannot transfer the said amount to the stipulated account because is a personal account, not the Trust's trust account.

8 As the Respondent refused to pay the R12 000 000.00 to the Trust's account, the trustees of the Trust through their Attorneys of Record issued a Warrant of Execution and attached the R12 000 000.00 which was held in the Respondent's Trust Account but the Respondent only managed to pay the monies to the Trust on the 28 March 2023, six (6) months after he was compelled by this Honourable Court to transfer the said monies not later than 24 hours.

9 The second complaint was made by the Applicant who alleged that the Respondent practiced without a 2022 Fidelity Fund Certificate but it was later withdrawn on the basis that the Applicant was satisfied that the Respondent possessed a valid 2022 Fidelity Fund Certificate.

Discussion

10 Section 43 of the Act provides that:

Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.

11 The said Section allows the LPC, as a statutory disciplinary body, to institute urgent legal proceedings in the High Court to suspend a legal practitioner if it is satisfied that a legal practitioner has misappropriated trust fund money or is guilty of serious misconduct. This in itself presupposes the notion that the LPC should put sufficient allegations before court to show that misappropriation has taken place.

12 The practical application of Section 43 of the Act has presented a challenge as courts have adopted a dim view of such proceedings being launched on an urgent basis with the investigation against the legal practitioner being incoming plate or it being launched before disciplinary proceedings have been concluded and an appropriate sanction is imposed and some courts have opted to discharge the rule nisi on that basis. Other courts however, have made it clear that once legal practitioners pilfer trust fund money, they must be suspended from the Roll.

13 In ***Limpopo Provincial Council of the South African Legal Practice v Chueu Incorporated Attorneys and others*** (6947/2021) [2021] ZALMPPHC 75 (25 October

2021). (8) the SCA faced the very same dilemma. In the Court a quo, the LPC brought an application in terms of Section 43 to suspend the Respondents which were directors of the first Respondent for a period of 18 months pending the disciplinary enquiry into the alleged misconduct of the Respondents which relating to in the misappropriation of funds received in trust from the Road Accident Fund and Trust deficit of R25 825 699.89. interim relief was granted in respect of the Second Respondent only and he was suspended for period of 12 months pending the finalization of the investigation in lieu of the disciplinary hearing and the application for the suspension of the remainder of the Respondent's (directors of the First Respondent) was dismissed. Aggrieved by the latter order, the applicant approached the supreme court with special leave to appeal after it was refused by the court a quo that the third to ninth Respondents as directors of the firm also be suspended as they cannot escape liability by pleading ignorance of financial matters when faced with an allegation of misappropriation.

14 The determination of applications of this nature involve a three-stage enquiry as confirmed recently in ***Hewetson v Law Society of the Free State*** (948/2018) [2020] ZASCA 49; [2020] 3 All SA 15 (SCA); 2020 (5) SA.86 (SCA) (5 May 2020) as set out in ***Malan and Another v Law Society***, Northern Province (568/2007/ [2008] ZASCA 90; 2009 (1) SA 216 (SCA; [2009] 1 All SA 133 (SCA) (12 September 2008); First, the Court Must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry. Second, it must consider whether the person concerned "in the discretion of the Court" is not a fit and proper person to continue to practice. 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 person in

question is to be removed from the Roll of Attorneys or whether an order of suspension from practice would suffice.

15 It came as no surprise that the SCA upheld the appeal and set aside the order of the high court and ordered the suspension of the third to eight Respondents for a period of six months pending the finalization of investigations into their conduct as directors of First Respondent (the law firm) failing which, the suspension order will lapse. The Court indicated that the order pertains to interim relief that was sought and emphasized that only when final relief is sought, would the question if the legal practitioners are fit and proper persons to continue practice and remain on the Roll of Legal Practitioners.

16 Section 86(4) of the Act, 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 the practice, on behalf of such person over which the practice exercises.

17 The Applicant requested Trust Bank statements from the Respondent, the latter failed to furnish them to the Applicant, as a result the Applicant had to obtain Trust bank statements from First National Bank.

18 On the 16 July 2022, the Respondent unilaterally and without instructions of the Trustees of the Trust invested R12 000 000.00 into his busines's First National Bank Investment account not opened in terms of the Act. He made submissions in his Answering Affidavit that it is in the best interest of the Trustees to invest the monies.

19 The Respondent did not account or pay the Trustees of the Trust regarding the R12 000 000.00.

20 The Respondent transferred out of his personal investment account an amount of R4 634 302.00. On the 14 September 2022, the Respondent further transferred the amount of R7 000 000.00 into another unknown FNB Account numbers not opened in terms of Section 86(4) of the Act. The Respondent failed to satisfy the Court on his submissions nor in his Answering Affidavit why these monies were transferred to unknown accounts.

21 On the 10 October 2022, the credit balance of the Respondent's FNB investment Account was R435 765.95. On the 31 December 2022, the credit balance on the Respondent's FNB investment account was reduced to R44 2489.06. The amount of R4 602 604.13 was credited from a Capitec Account in the name of PJ Van Eeden into the Respondent's FNB investment account on the 27 February 2023 and the balance in the Respondent's FNB investment account increased to R5 047 566.89.

22 The Respondent defied the Court Order of the 27 September 2022 after he was Ordered by the Honourable Court to pay an amount of R12 000 000.00 into the Trust's Bank Account. The said amount was only paid into the Trust's trust bank account without interests after the Respondent's Trust Account had been attached in Execution.

23 The Applicant conducted investigations as the Respondent's Trust Bank statements as well as Investment Account statements were obtained from First National Bank.

24 The Respondent transferred Client's monies from his Investment Account into unknown Bank Accounts without instructions and these accounts are also unknown to the Trustees. The investments that were made by the Respondent were not made in accordance with Section 86(4) of the Act.

25 There was misappropriation of funds by the Respondent.

Conclusion

26 In light of the abovementioned considerations, there is no alternative remedy available to the Applicant, and in my view, has thus shown by virtue of being the regulatory body of the Respondent that it has a clear right and there is a reasonable apprehension that members of the public may suffer same fate.

27 The foundation of the legal profession is honesty and integrity. The conduct of the Respondent falls short of this required standard and can only be described as untrustworthy. In the Court's view and also on the balance of probabilities in this matter, the misappropriation of trust money falls into the ambit of misconduct by a Legal Practitioner. In the prevailing circumstances highlighted herein above, his suspension is warranted as he cannot be considered as a fit and proper person to continue practicing with such serious allegations of malfeasance.

28 The Applicant's Investigation Committee has already investigated the complaint, obtained relevant bank statements and the Respondent's written response to the allegations.

29 It is also important to point out that the Applicant is not required to convene a disciplinary enquiry prior to taking steps for the suspension of the Respondent.

30 The Applicant submitted that the Respondent should pay costs on an attorney and client scale. This court is of the view that the Applicant should be compensated for successfully litigating against the Respondent. The Court takes note that party and party scale is low when compared to attorney and client scale costs, therefore, party and party scale costs may not cover all the expenses incurred as a result of this legal proceeding. The issue of costs is the discretion of the Court, therefore, the court finds that an order of attorney and client scale costs against the Respondent will be reasonable to cover the Applicant's legal expenses.

Order

31 The Court makes the following order;

1. That the Respondent be immediately suspended for a period of 18 (eighteen) months from Practicing as an Advocate of this Honourable Court.
2. The Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court his certificate of enrolment as an advocate of this Honourable Court.
3. That in the event of the Respondent failing to comply with the terms of this order detailed in the previous paragraph within 3 (three) days from the date of this order, the sheriff of the district in which the certificates are, be authorized and

directed to take possession of the certificates and to hand them to the Registrar of this Honourable Court.

4. That during the period of suspension, the Respondent is prohibited from handling or operating on his trust accounts and practice accounts.

5. That the Director of the Limpopo Provincial Office of the Legal Council,

   Khomotso Matsaung, or any person nominated by her, be appointed as curator bonis (curator) to administer and control the trust account of the Respondent, including account relating to insolvent and any deceased estate and any estate under curatorship connected with the Respondent's practice as a trust advocate and including also, the separate banking accounts opened and kept by the Respondent at any bank in the Republic of South Africa in terms of section 86(1) of Act No 28 of 2014, Legal Practice Act of 2014 and/or any separate savings or interest-bearing trust account as contemplated by section 86(3) and 86(4) of Act No. 28 of 2014, in which monies from such trust banking account 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 said accounts being hereafter referred to as the trust account), with the following power and duties:

   5.1 Immediately to take possession of the Respondent's accounting records, files and documents and subject to the approval of the board of control of the Legal Practitioners Fidelity Fund (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 respondent was acting at the date of this order.

5.2 Subject to the approval and control of board of control of the Fund 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 have 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 of the Legal Practice Act of 2014, to institute any legal proceedings which may be necessary for the recovery of monies which may be due to such persons in respect of incomplete transactions, if any, in which 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 Respondent's accounting records the names of all Persons on whose account Respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors); to call upon Respondent to furnish her, within 30 (thirty) days of the date of service of this order or such further period as she 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 she may require, to enable her, acting in consultation with, and subject to the requirements of, the board of control of the Fund, 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 To admit or reject, in whole or in part, subject to the board of control of the Fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's right of access to the civil courts;

5.6 Having determined the amounts which she considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the Fund;

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 utilize such surplus to settle or reduce (as the case may be), firstly, any claim of the Fund in terms of section 88 of the Legal Practice Act of 2014 in respect of any interest herein referred to and, secondly, without prejudice to the rights of the creditors of Respondent, the costs feed and expenses referred to or such portion thereof as has not already been separately paid by Respondent to Applicant ,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 board of control of the

Fund, to Respondent, if he is solvent, or if Respondent is insolvent, to the trustee(s) of 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 to 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. (we need to confirm this paragraph)

5.9 Subject to the approval of the chairman of the board of control of the Fund 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 her in carrying out her duties as curator; and

5.10 To render from time to time, as curator, returns to the board of control of The Fund showing how the trust account(s) of Respondent has/have been dealt with, until such time as the board notifies her that she may regard her duties as curator as terminated.

6. That Respondent immediately deliver his accounting records, files and documents containing particulars and information relating to;

   6.1 any monies received, held or paid by Respondent for or to account of any person while practicing as a trust advocate;

   6.2 any monies invested by the Respondent in terms of Section 86 of the Legal Practice Act of 2014;

   6.3 any interest on monies so invested which was over or credited to 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 as amended;

   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 Companies Act, No 61 of 1973 or the Companies Act No 71 of 2008, administered by 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 Respondent as or on behalf of the liquidator; and

6.9 Respondent's practice as a trust account advocate of this Honourable Court, to the curator appointed, 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 her nominee.

7. That should Respondent fail to comply with the provisions of the preceding paragraph(s) 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 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. That the Curator shall be entitled to;

8.1 Hand over to the persons entitled hereto 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 7.1 to provide any such documentation or information which she may consider relevant in respect of a claim or possible or anticipated claim, against her 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.

8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 That Respondent be and is hereby removed from office as-

8.4.1 Executor of any estate of which 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);

8.4.2 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;

8.4.3 Trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

8.4.4 Liquidator of any company in terms of section 379(2) read with

379(e) of the Companies Act, No 61 of 1973;

8.4.5 Trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

8.4.6 Liquidator of any Close Corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

8.4.7 Administrator appointed in terms of section 74 of the Magistrates Court Act, No 32 of 1944.

9. That the Respondent is liable for and directed to pay to the Applicant;

9.1 in terms of section 87 of the Legal Practice Act of 2014, The reasonable costs of the inspection of the accounting records of the Respondent;

9.2 the reasonable fees of the Auditor engaged by Applicant;

9.3 the reasonable fees and expenses of the Curator, including travelling time;

9.4 the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

9.5 the expenses relating to the publication of this order or an abbreviated version thereof; and the costs of this application on an attorney-and-client scale.

10. That 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 him (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. That 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 authorized to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

12. That the Respondent pay cost on attorney and client scale.

[redacted]

CHAUKE FR

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

I agree

[redacted]

MASHAMBA E

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION; POLOKWANE

APPEARANCES

For the Applicant: Adv. Mokete Rakgogo

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For the Respondent: Adv. P J Van Eeden (in Person)

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Heard on: 25th April 2025

Judgement delivered on: 28th July 2025