IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**

13 August 2025 [redacted]

DATE **SIGNATURE**

Case No: 136405/24

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL	Applicant
and	
WILLIAM PHATU JUNIOR MASHELA	First Respondent
AUGUSTINE SEBOKA CHILOANE	Second Respondent
MASHELA PWJ ATTORNEYS INC	Third Respondent
MASHELA CHILOANE INC	Fourth Respondent

NEUKIRCHER J:

1] On 10 December 2024, Motha J granted a rule *nisi* with a return date of 17 February 2025 in terms of which, *inter alia*, the first respondent was immediately suspended from practicing as an attorney. The rule *nisi* also contains various other provisions, for example the first respondent:

a) had to hand in his certificate of enrolment to the Registrar of this court;

b) was prohibited from operating a trust account;

c) had to deliver his accounting records, files and document to the *curator* appointed by the Legal Practice Council (LPC);

d) was removed from holding an office as a trustee of an insolvent estate, *curator*, executor or liquidator.

2] The return date of the rule *nisi* was extended to 27 March 2025, and shortly before that hearing, the first respondent filed an answering affidavit. As a result, on 27 March 2025, the Full Bench extended the rule *nisi* to 5 August 2025.

3] The notice of set down for this hearing informs the first respondent that the LPC will seek an order that his name be struck from the roll of legal practitioners. It is this application that the court must consider: in effect, the consideration is whether the first respondent should remain suspended from practice for a period of time, or whether his name should be struck from the roll of attorneys.

The facts

4] I do not intend to dwell on the functions, duties and *locus standi* of the LPC in this application. Those have been well documented in many judgments and have also been conceded by the first respondent. Suffice it to say that the LPC acts as *custos morum* of the legal profession and it is its legal obligation to ensure compliance with the Legal Practice Act, 28 of 2014 (the LPA), its Rules and the Code of Conduct.

5] The present application was brought against the four mentioned respondents, but it was set down against only the first respondent and the rule *nisi* of December 2024 is only in respect of him.

6] The first respondent was admitted as an attorney on 20 July 2021 and practiced for his own account under the name of Mashela PWJ Attorneys.[1] The complaints levelled against him are numerous and include:

a) filing unqualified auditor's reports for the 2022 and 2023 financial years despite the fact that there was a significant trust account deficit[2];

b) that he failed to report the trust deficit to the LPC;

c) that he acted with gross negligence or recklessness in his handling of trust funds;

d) that he failed to grant the LPC's inspector (Mr Nyali) access to all his accounting records;

e) that he failed to keep proper accounting records;

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[1] The third respondent. Given that it is not disputed that the first respondent is the sole proprietor of the third respondent, it stands to reason that any order granted against the first respondent would affect the standing of the third respondent as well

[2] The LPC alleges that the deficit amounted to over R32 million; the first respondent conceded in his answering affidavit to a deficit of approximately R7 million

f) that he failed to handle his instructions properly;

g) that he has contravened several provisions of the LPA, the Rules and the Code of Conduct; and

h) that he poses a threat to trust creditors, the Fidelity Fund and to his clients.

7] Between 2022 and 2024 the LPC received thirty-seven complaints against the first respondent. They are all, more or less, of the same nature and so not all are set out in this judgment. All of them involve a serious dereliction of duty and care, misappropriation of funds and a failure to provide clients with proper feedback in respect of the instructions received.

8] In the 33 complaints received in respect of instructions to transfer immovable properties, there is a recurring theme: the receipt of an instruction to transfer from the client, payment by the client of the purchase price, failure to pay this money over to the seller, payment of funds to unknown beneficiaries and the ultimate disappearance of the funds received. None of these allegations are disputed by the first respondent in the answering affidavit filed on 25 March 2025.

9] Examples of the complaints are those set out below: as stated, it is unnecessary to set out all 33 complaints as they are all similar in nature.

Complaint of Mr Mankwe

10] Mr Mankwe instructed the first respondent to transfer a property into his name. He paid the purchase price of R570 000 into the first respondent's trust account on 24

October 2023. First respondent failed to provide Mr Mankwe with feedback in respect of the transfer and also failed to effect transfer of the property.

11] According to Mr Nyali, an analysis of the first respondent's trust account statements reveal that he effected a series of payments to several unknown beneficiaries, and by 30 November 2023 the trust account balance was but R393-70.

12] It is common cause that the property was never transferred and thus Mr Mankwe suffered a loss of R570 000.

Complaint of Ms Mbonani

13] Ms Mbonani, similarly, instructed the first respondent to transfer a property into her name. She paid the purchase price of R150 000 into the first respondent's trust account on 24 June 2024.

14] As with Mr Mankwe, the first respondent failed to provide her with any feedback. He also effected a series of payments out of the trust account to various unknown beneficiaries. As at 10 July 2024, the trust account balance was R45-39 and Ms Mbonani's funds were disbursed despite no transfer having taken place.

15] But these are not the only complaints received by the LPC of this nature – there are another 31 where the first respondent was instructed to transfer the property, the purchase price paid into his trust account, the funds misappropriated and the transfer failed to materialize.

16] According to the LPC, once a client paid the purchase price into his trust account, the first respondent would then pay an amount into his business account as "transfer fees" and the remaining balance would be paid out to unknown beneficiaries – all this without the first respondent having done any work. Although the first respondent informed Mr Nyali that some of the transfers had indeed taken place, no proof was provided to either Mr Nyali or to this court.

17] The total amount of the deposits between January 2022 and March 2024 was R32 233 602-25. The trust account operated by the first respondent was closed on 8 June 2024 – it reflected a zero balance. Given that the transfers had yet to take place, this was simply not possible and, according to Mr Nyali, the trust account deficit as at 8 June 2024 was thus R32 233 602-25.

18] The LPC also alleges that the first respondent's trust account of the financial years 2022 and 2023 were manipulated to conceal an enormous trust deficit and that, despite this, the firm's auditor expressed an unqualified opinion for both years. The auditor has since been referred to the Independent Regulatory Board for Auditors for investigation.

19] The 2022 trust statements reveal that:

a) the trust balance as at 28 February 2022 was actually an amount of R496 113-61 and not the amount of R43-25 shown in the audit report/annual statements. Thus, the trust funds were understated by R496 070-26;

b) however, the total trust creditor's balance as at 28 February 2022 could not be verified by Mr Nyali as the first respondent had failed to maintain accounting records;

c) the majority of the funds of R496 113-61 were misappropriated and the actual trust deficits (insofar as Mr Nyali could verify the trust creditors), was R2 323 713-61 which is calculated as follows:

Deposits from clients	: R2 819 827-22
Less: trust funds available	: (R 496 113-61)
Trust deficit	: R 2 323 713-61[3]

20] The trust statements for 2023 reveal that:

a) just prior to 28 February 2023 the trust account balance was R50 658-19[4], and on that date an amount of R3 935 987 was transferred from the business account to the trust account. However, the trust account was still in deficit as:

Client deposits (January 2022 –February 2023)	: R20 190 906-81
Less: trust funds available	: (R 50 658-19)
Trust deficit as at 28/2/2023	: R20 140 248-62[5]

21] But these complaints, as serious as they are, are not the only ones levelled against the first respondent. He also failed to provide Mr Nyali with the specified requested accounting records[6], he informed Mr Nyali that he does not maintain

[3] In breach of Rule 54.14.8 ie that the total amount of money in his trust account at any date is not less than the total amount of trust creditors

[4] This the LPC states, after an analysis of the bank statements, is the correct trust balance taking into account the deposits received from clients

[5] See fn 4

[6] In breach of s37(2)(a) of the LPA

accounting records[7], he effected transfers from his trust account into his business account as "fees" without performing the work[8], between 9 June 2024 and 10 December 2024 he practiced without a trust account[9] and he failed to report his trust deficit to the LPC[10].

22] Whist there are other complaints against the first respondent, these simply add fuel to the already burning fire.

The first respondent's version

23] Interestingly, the first respondent does not take issue with any of the accusations levelled against him. Instead, he concedes that:

a) he is guilty of unprofessional and dishonest conduct that is unworthy of the legal profession;

b) he contravened various provisions of the LPA, its Rules and the Code of Conduct;

c) he "*could have done better*" to keep his accounting records in accordance with the LPA and failed to do so;

d) he paid money as salary from the trust account instead of transferring it to the business account as fees;

e) he took instructions for the transfer of properties without being an admitted conveyancer;

f) he failed to consult with the clients who paid him to transfer their property;

g) he charged fees for services not rendered, and

[7] In breach of Rule 54.6
[8] In breach of Rule 54.14.14.2
[9] In breach of s86(1) of the LPA
[10] In breach of Rule 54.14.10

h) he acted with gross negligence with respect to the property transactions.

The property transactions

24] The first respondent's explanation is that he was duped by his paternal cousin, Christina Mothwa and her partner Edith. They approached him in 2021 after he was admitted as an attorney and had opened his law firm[11].

25] Ms Mothwa is an estate agent. She and Edith would meet clients who would then make payments into the first respondent's trust account for the purchase of RDP houses. The first respondent would pay this money over to an account on the instructions of Ms Mothwa after deducting his "fee".

26] The money was to have been paid to the seller by Ms Mothwa or Edith, but never was and the property was not transferred either. According to the first respondent, a docket has been opened against both Ms Mothwa and Edith and they have subsequently been arrested.

Re: failure to co-operate with Mr Nyali

27] The first respondent denies that he failed to co-operate with Mr Nyali. He alleges that he met with Mr Nyali and provided him with his version – this is indeed true. What he then states is that he could not provide Mr Nyali with any trust account statements as the account had been closed and he had no access to those records. In my view his excuse must be rejected especially as Mr Nyali managed to obtain access to those very statements – there is thus no reason why the first respondent

[11] The third respondent

could not have done the same. The first respondent provides no proof, or even suggests, that he approached the bank where the account was held and requested the statements only to be refused access to them. Thus, on his own version, his conduct amounts to a failure to co-operate.

The trust account deficit

28] The first respondent also denies that the trust deficit was over R32 million – on his version it is approximately R7 million. He fails to provide any proof of this. Given that he had no accounting records and had no statements from which to make any calculation, his version must be rejected. In any event, even if this court accepts his version, the deficit is substantial. He also failed to report the trust deficit to the LPC.

Misappropriation of funds

29] The first respondent argues that he never received a personal benefit from any misappropriated funds. He argues that this is something that the court should take into consideration when exercising its discretion regarding the sanction to be imposed.

30] But the first respondent did personally benefit from the misappropriated funds – on his own version he deducted fees from monies paid by his clients without doing the work.

The sanction

31] Over and above the argument vis-à-vis the lack of personal benefit, he argues that he is a young and junior attorney with a lack of experience who was duped by a family member and that he will not violate the LPC Rules again.

32] The first respondent seeks an order that this court consider a sanction that suspends him from practice for a period of 5 years, or such other period as this court deems appropriate, instead of striking him from the roll.

Considerations

33] The test in matters such as this is, by now, trite. It is:

> "It is now settled that an application for the removal from the roll, or suspension from practice, of an attorney involves a three-stage enquiry. First, the court has to determine whether the alleged offending conduct has been established on a balance of probabilities. It is a factual enquiry. Second. Consideration must be given to the question whether, in the discretion of the court, the person is not 'a fit and proper person to continue to practice as an attorney'. This involved a weighing up of the conduct complained of against the conduct expected of an attorney and is a value judgment. Third, the court is required to consider whether, in light of all the circumstances, the name of the attorney concerned should be removed from the roll of attorneys or whether an order suspending him from practice would suffice."[12]

34] It cannot be overemphasized that

> "...the profession of an attorney, as an officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members, and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly. When money is

[12] *Law Society of the Northern Provinces v Morobadi* (1151/2017) [2018] ZASCA 185 (11 December 2018) par 5

entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that money will not be used for any other purpose than that which it is being held, and that it will be available to be paid to the persons on whose behalf it is held, whenever it is required. The theft of money held by him in trust…is, in my view, indeed a weighty consideration militating against any lesser stricture than his removal from the roll."[13]

35] In my view, the first leg of the three-stage enquiry has been satisfied by the LPC by virtue of the uncontested facts put before this court.

36] Secondly, the first respondent has, through his repeated conduct, demonstrated that he is not fit and proper to practice as an attorney: he failed to keep proper books, he acted as an attorney between 9 June 2024 and 10 December 2024 without a trust account, he debited fees but failed to do the work, he paid money from his trust account to unknown beneficiaries, he failed to report a significant trust deficit and he misappropriated trust funds.

37] Lastly, applying the principle laid down by the SCA in *Vassen*, and given the seriousness of his admitted transgressions of the LPA, its Rules and the Code of Conduct, to order a suspension would be to simply gloss over and excuse his conduct. It is also just not an acceptable excuse to say that as he is young and inexperienced, his conduct can, or should, be excused. In my view, given all the facts, the only appropriate order is to strike the first respondent from the roll of attorneys and confirm the remainder of the rule *nisi* granted on 10 December 2024.

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[13] *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G (Vassen)

Costs

38] The first respondent conceded that the LPC is entitled to the costs of the application but argued that the costs should not be attorney and client, but rather those on Scale C. These were the only costs with which the first respondent took issue.

39] But in LPC matters, attorney and client costs are not punitive in nature or a mark of the displeasure of the court. They are awarded as the LPC brings the application as *custos morum* of the profession and provides the court with the facts upon which the court then exercises its discretion to either grant or refuse the relief sought. The LPC obtains its funds from its members' contributions and there is no reason why it should be out of pocket as it must eventually account to its members for money expended in pursuit of the oversight functions entrusted to it in terms of the LPA. In my view, there is no reason to depart from the usual costs order.

Order

40] The order of this court is the following:

1. The name of the first respondent, William Phatu Junior Mashela, is struck off the roll of legal practitioners.
2. The relief set out in paragraphs 2.3 to 2.10 of the court order of the Honourable Mr Justice Motha dated 10 December 2024 shall remain extant.
3. The first and third respondents are ordered to pay:
    3.1 the reasonable costs of the inspection of the accounting records of the first and third respondents in terms of s87(2) of the LPA;

3.2 the reasonable fees and expenses of the *curator*;

3.3 the reasonable fees and expenses of any person(s) consulted and/or engaged by the *curator*;

3.4 the expenses relating to the publication of this order or an abbreviated version thereof; and

3.5 the costs of this application on an attorney and client scale.

[redacted]

B NEUKIRCHER

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree

[redacted]

O MOOKI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judges whose names are reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 15 August 2025.

For the applicant	:	Adv Mteto
Instructed by	:	Renqe FY Inc
For the defendant	:	Mr Phaladi
Instructed by	:	Mephaladi Attorneys
Matter heard on	:	5 August 2025
Judgment date	:	15 August 2025