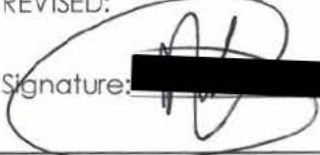




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) **REPORTABLE:**
- (2) OF INTEREST TO OTHER JUDGES:
- (3) REVISED:
- (4) Signature:  Date: 14/08/2025

CASE NO.: 079786/23

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

ARNOLD MKHABELA

First Respondent

MKHABELA INCORPORATED ATTORNEYS

Second Respondent

JUDGMENT

INTRODUCTION

- [1]. The applicant seeks, amongst others, an order for the removal of the First Respondent's name from the roll of legal practitioners, alternatively, for his suspension from practice as a legal practitioner.
- [2]. The First Respondent was admitted and enrolled as an attorney of this Court on 11 January 2000. He commenced practising as a sole practitioner under the name and style of Mkhabela Incorporated Attorneys with effect from 10 April 2000. He also practised as a partner at the firm Khoza, Mkhabela & Maluleke Attorneys from 1 May 2001 to December 2001, and as a partner at the firm Mhlaba Attorneys from May 2006 to October 2007.
- [3]. The Applicant alleged that the First Respondent has engaged in serious misconduct that justifies his removal from the roll of legal practitioners, including misappropriation of trust funds and practising without a fidelity fund certificate.
- [4]. It is trite law that matters of this nature are *sui generis*. There is no *lis* between the Applicant and the Respondents. The Applicant, as the custodian of the profession, merely places facts before this Court for its consideration.
- [5]. It is further trite law that in matters of this nature, the enquiry that the Court must conduct is threefold, namely:

- 5.1 It must decide as a matter of fact whether the alleged offending conduct by the legal practitioner has been established.
- 5.2 If the Court is satisfied that the offending conduct has been established, a value judgment is required to decide whether the person concerned is not a fit and proper person to practise as a legal practitioner.
- 5.3 If the Court decides that the legal practitioner concerned is not a fit and proper person to practise as a legal practitioner, it must decide in the exercise of its discretion whether, in all the circumstances of the case, the legal practitioner in question is to be removed from the roll or merely suspended from practice.
- [6]. The First Respondent is alleged to have failed to pay his annual fees in the total amount of R10 608.34. He was called to a disciplinary hearing, which was held on 18 May 2021, and was ordered to pay a fine of R10,000.00 plus the costs of the disciplinary committee in the amount of R3,611.51. The First Respondent failed to pay the amounts above.
- [7]. Failure to pay the fine and costs is misconduct on the part of a legal practitioner and is a contravention of Rule 6 of the LPC Rules, read with clause 3.16 of the Code of Conduct.
- [8]. There are several complaints by clients of the First Respondent, and this court does not intend to regurgitate all the facts thereof. Suffice it to state that they relate to the First Respondent's failure to carry out their instructions. On 26 April

2023, the Applicant received a complaint from Ms. Zanele Florence Zwane. During 2018, Ms. Zwane instructed the First Respondent to institute proceedings against the Road Accident Fund on her behalf and never received any communication from the First Respondent since 2018.

- [9]. PJ Sebetha Attorneys also laid a complaint against the First Respondent on behalf of Mr. Zitho Thomas Molane, who alleged that he instructed the First Respondent to institute proceedings against the RAF on his behalf. On 06 August 2019, RAF made an offer of R350 000.00 to settle the matter, which offer was accepted. First Respondent failed to account to the complainant and to effect payment in favour of the complainant.
- [10]. A further amount of R39 864.37 in respect of costs was paid into the First Respondent's trust account.
- [11]. Similarly, Mr. Siphesihle Bryan Xaba laid a similar complaint against the First Respondent. The First Respondent was untruthful to the client, stating that the matter was still in progress when in fact it was settled, and he had failed to account to the client and pay over to the client the settlement amount.
- [12]. On 3 April 2023, the Applicant received a similar complaint from Ms. Nobahle Maphumulo. RAF settled her claim and paid an amount of R400 000.00 into the trust account of the First Respondent, and he failed to account to the client and to effect payment of the settlement amount in the client's favour.

- [13]. There were further complaints by Benedict Refilwe Lempetse, Joyce Mbonani, Aranjo Makamo and Cathrien Hlonkwane. The First Respondent was instructed to institute proceedings on their behalf, but failed to carry out such instructions, and their claims prescribed and/or rejected. The First Respondent failed to communicate with them.
- [14]. It is perhaps apposite that this Court deals at this stage with the First Respondent's perspective of the case. The First Respondent uploaded its written submissions on Caselines.
- [15]. It is noted that the First Respondent denies most of the transgressions levelled against him but has conceded to some. He further acknowledged that he failed to avoid trust deficits and that he misappropriated trust funds. Despite the acknowledgement of all the above, he, however, submitted that he remains a fit and proper person to practice as a legal practitioner and to remain on the roll of legal practitioners.
- [16]. It is contended on behalf of the First Respondent that he did not act with dishonesty. None of the transgressions he committed reflected on his honesty and integrity. In contrast, he admits that he used the trust funds for purposes other than their intended use, which did not evidence dishonesty but reflected a contravention of a rule.
- [17]. It was further submitted on his behalf that only three clients were prejudiced, and no other trust creditors were prejudiced, except for the delay in receiving their

payments. He has undertaken to reimburse the clients or the fidelity fund, any amounts which belonged to clients but were used for other purposes. Based on this argument, it was submitted on the First Respondent's behalf that an order to strike off will, under these circumstances, be severe and inappropriate.

- [18]. This Court is of the view that the Respondent's attitude is nonchalant to say the least. The above is a display of a cavalier attitude to the matter and does not accord it the seriousness it deserves.
- [19]. Firstly, there is the issue of the First Respondent's failure to pay his annual fees, for which he was ordered to pay a fine of R10,000.00 plus the costs of the disciplinary committee of R3,611.51, which remained unpaid as at the date of the hearing of this matter. It is not stated anywhere when such would be paid, other than that the First Respondent intends to make good the amount due as soon as his financial circumstances allow.
- [20]. The Respondent's conduct in this regard is a contravention of Rule 4.1 and 6 of the LPC Rules, read together with clause 3.16 of the Code of Conduct.
- [21]. Concerning the complaint of Ms. Zwane, the First Respondent states that he was not the attorney dealing with the matter. The complaint came at a time when he had already retrenched and most of the professional staff had already left his employment. This, in the Court's view, demonstrates the First Respondent's nonchalant approach to the matter. The professionals he is referring to were in his employ, and he is responsible for their conduct. He cannot wash his hands

because he did not deal with the matter directly, but somebody else dealt with it. He ought to have acknowledged receipt of the complaint and explained then what he seeks to explain to this Court.

[22]. This also applies to the complaint of Lempetse. The First Respondent seeks to rely on the fact that he was not the attorney who personally dealt with the matter. The point is that the buck stops with him. He was the employer. He states further that the LPC has his response, but again failed to attach a copy thereof and tell this Court when exactly he provided his response.

[23]. This is a violation of clause 3.1 of the Code of Conduct. He failed to maintain the highest standard of honesty and integrity. He sought to rely on the allegation that he was not the attorney who personally dealt with the matter.

[24]. About the Molane and the Mbuthu complaints, the First Respondent denies the allegation and states that his office accounted directly to the client and there was no basis that he should have effected transfer in the sum alleged to PJ Sebetha Attorneys. It may be so, but professional courtesy demands that he ought to have explained to PJ Sebetha Attorneys and the LPC, which he did not. That amounted to professional misconduct in the Court's view.

[25]. In the Mbuthu matter, it would have been simpler for him to respond to the Applicant and state what had transpired. To his knowledge, the complaint was withdrawn, but he failed to attach to his papers a copy of the alleged affidavit withdrawing the complaint.

- [26]. To compound matters further, the First Respondent does not tell this Court when exactly he accounted to the client. The reason for the cash withdrawal is also not convincing. How that was done is not explained, and surely there would have been bank records to support this story.
- [27]. This is again a violation of clause 3.1 of the Code of Conduct and clause 16.1 in that he failed to respond to all communications that required an answer unless good cause for refusing an answer existed.
- [28]. Xaba's matter is also perplexing. The First Respondent's excuse in this regard is that by the time he received this complaint, Xaba had already been paid, and he therefore did not see the need to reply to the LPC. There was a need to explain to the LPC to put the matter at rest.
- [29]. The Maphumulo and Lekwene complaints and explanation of the First Respondent again, display his cavalier attitude. He delayed payment of the client's money because he was at the point where he was rolling Trust Funds. If this does not constitute a risk to client funds, then nothing else would constitute a risk. Trust monies are intended for specific purposes and not to be rolled at the whim of the Legal Practitioner.
- [30]. This cannot be honest conduct on the part of the First Respondent. He failed in maintaining the highest standard of honesty and integrity.

- [31]. Concerning the complaint of Mbonani, this Court agrees with the submissions of the First Respondent. It is doubtful that when he received instructions in 2015, the RAF would have made any offer in that year. It is, however, questionable whether the said offer was made in 2023. The First Respondent could have easily attached the said offer to his papers.
- [32]. In the Makamo, Hlonkwane and Mojela matters, the First Respondent alleges that he never received the said complaints and could not respond to them. He does not address the said complaints and offer to this court any explanation other than the allegation that he did not receive them. This again is further confirmation of the attitude of the First Respondent to the claims he is faced with.
- [33]. This also includes the complaint of Mariam Mamonyane. The First Respondent alleged that he saw the complaint for the first time when he read the Applicant's founding affidavit. He again states that he was not the attorney dealing with the matter. This court did not understand that the First Respondent had partners in his firm. It has always been the understanding of this Court that the First Respondent was a sole practitioner and had employed professionals to assist him.
- [34]. The First Respondent admitted the allegations against him in the Sithole complaint and on several other allegations, including that of Vinas Mkhabela.
- [35]. In the matter of Mudau, he again raises the issue of rolling trust funds, and this court has already expressed its view on the matter and need not repeat itself.

- [36]. The other matters that form the subject of the complaints against the First Respondent have been settled, and he believed that they had been withdrawn even though he provided no documentation to that effect.
- [37]. The Court does not propose to deal with the complaint by Leon JJ Van Rensburg Attorneys and will give the First Respondent the benefit of the doubt insofar as it is concerned.
- [38]. There are so many complaints against the First Respondent, most of which the First Respondent has not applied his mind to before this court.
- [39]. In the Masinga matter, the complaint is that Masinga met a certain Ronny Rikhotso, in the employ of the First Respondent, whom he instructed to assist with the transfer of a certain property into his name. He paid his employee for the services requested. Whilst it is correct that the First Respondent is not a conveyancer, this court is of the view that it is not enough for him to state that without further ado. One would have expected that he would either deny that he ever had an employee by the name of Ronny Rikhotso, as alleged, or if he had such an employee, what investigations he conducted or intends to perform in the matter.
- [40]. In the complaint of Nkosi, which is similar to that of Masinga, the First Respondent mentions that he does not have an employee named Rikhotso. However, he goes further and states that Nkosi was refunded his money, which begs the question?

Why, in the first place, was the money taken when he gave instructions which required a conveyancer?

- [41]. Again, the First Respondent lacks appreciation of the complaints laid against him. In the Guambe matter, he conceded that he gave a belated response and further stated that he failed to understand why this issue was raised in this matter. This matter is raised precisely to challenge his fitness to practise as a legal practitioner. Similarly, the same logic would apply in the matter of Tshabalala, wherein he again responded late. Again, he gave an excuse that he was not the attorney dealing with the matter. This excuse cannot fly in the face of the fact that he was the employer.
- [42]. In the Macandza matter, the complaint against the First Respondent is that he failed to respond within a reasonable period, which fact made him guilty of violating clause 16.2 of the Code of Conduct. No explanation is given in this regard.
- [43]. The less said about the complaint by Smith of Carter Smith Incorporated, the better. The First Respondent, who is a legal practitioner, failed to comply with a court order. The reason is that he did not have money, as he had paid the capital and the costs. To who was the money paid when his client was the curator, and to whom was, he supposed to make the payment?
- [44]. In the matter involving Iris Mokgabudi, the First Respondent denies that he failed to reply to correspondence addressed to him by the Applicant and attached a

copy of the letter to the Applicant. This begs the question why, in the other instances where he denies that he failed to respond to the Applicant's correspondence, he did not do the same, namely, attach copies thereof.

- [45]. The First Respondent has not been able to provide a reasonable explanation for many of the alleged transgressions other than a bare denial thereof. His denial in a number of them is that he was not the attorney dealing with those matters, and as such, he cannot give an explanation.
- [46]. This court mentioned on several occasions that the First Respondent is nonchalant about his transgressions. To compound matters, the First Respondent had a deficit in his trust account.
- [47]. Reddy reported that the First Respondent's firm's annual Statement on Trust Accounts for the years ending 28 February 2022 and 28 February 2021, which were submitted to the Applicant together with an auditor's report, reflected a nil balance on surplus and or deficit. However, his investigations appear to indicate a trust deficit of R2,581,103.30, with outstanding payments to Sithole, Seatile, Sekgobela, Yende, Dlamini, Mathebula and Malope. The Total trust creditors stood at R2, 680,395.00, and the trust bank balance, as at 28 February 2021 was R99, 291.70.
- [48]. The trust position as at 30 June 2021 was a deficit of R756, 368.40. This, according to the Applicant, is vastly different to the trust position reported in the attorneys' annual statement on trust account for the year 28 February 2022.

- [49]. Reddy opined that the First Respondent intentionally misrepresented the firm's trust position to the Applicant to obtain a Fidelity Fund certificate.
- [50]. The findings indicate that the firm had a significant trust deficit during the 2021 and 2022 financial years, which resulted in delays in effecting payments to trust creditors, meaning that no reliance can be placed on the audit reports for the years 28 February 2021 and February 2022.
- [51]. The conduct of the First Respondent contravened several provisions of the Legal Practice Act, the LPC Rules and the Code of Conduct for Legal Practitioners and some have already been referred to above. Concerning the trust deficit, he not only failed to report the deficit to the Applicant but also misrepresented it in the audit report that was submitted to the Applicant.
- [52]. This court agrees with the submissions of the Applicant that, considering the totality of the First Respondent's infractions, there is no argument that his conduct is dishonourable, unprofessional and unworthy of a legal practitioner.
- [53]. The First Respondent's conduct is of such a degree that he cannot be a fit and proper person to practice as a legal practitioner.
- [54]. The issue then for this Court is whether, in the circumstances, it is to exercise its discretion to remove the First Respondent's name from the roll of legal practitioners or that he be suspended from practice as a legal practitioner.

- [55]. A legal practitioner must scrupulously comply with the provisions of the Legal Practice Act, the Attorneys Act and the Rules for the Attorneys Profession, especially with the money of a client which is placed into his/her custody and control.
- [56]. The First Respondent, in his own words, used trust monies for his own needs when he encountered financial problems. In his own words, he began rolling his trust account funds, which posed a risk for the clients.
- [57]. Trust money does not form part of the assets of a legal practitioner. The very essence of a trust fund is the absence of risk and the confidence created thereby. The unjustifiable handling of trust money is untenable and not only frustrates the legal requirements relating to trust money but also undermines the principle that a trust account is entirely safe in respect of funds held therein by a legal practitioner on behalf of another person.¹
- [58]. Legal practitioners must always prefer the interest of their clients above their own and must exercise the highest degree of good faith in their dealings with their clients.

¹¹ *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) at 51 B-I; *Law Society of the Cape of Good Hope vs Buddricks* 2003 (2) SA 11 (SCA) at 13 I and 14 A to B; *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 (12/09/2008) at [4 - 9] 28 *Law Society Transvaal vs Mathews*, supra at 393 I-J; *Olivier vs Die Kaapse Balie-Raad* 1972(3) SA 485(A) at 496 F-G; *Summerley vs Law Society Northern Provinces* 2006(5) SA 613(SCA) at 615 BF; *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 (12/09/2008) at [9] 29 *Law Society Transvaal vs Mathews*, supra at 393 I-J; *Olivier vs Die Kaapse Balie-Raad* 1972(3) SA 485(A) at 496 F-G; *Summerley vs Law Society Northern Provinces* 2006(5) SA 613(SCA) at 615 BF; *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 (12/09/2008) at [9].

[59]. The image and standing of the profession are judged by the conduct and reputation of all its members, and to maintain this confidence and trust, all members of the profession must exhibit the highest qualities of honesty and integrity. The law expects from a legal practitioner the highest possible degree of good faith in his dealings with his client, which always implies that his submissions and representations to the client must be accurate, honest and frank.

[60]. The First Respondent failed to meet this high standard of a legal practitioner, and to compound matters further, he has not been candid with the court in certain instances and did not take the court into his confidence. He would not take responsibility and sought to shift the blame, stating that he was not the attorney dealing with those matters. However, he was a sole practitioner and employed professionals to assist him. He is responsible for their conduct in the discharge of their duties towards his clients.

[61]. In the circumstances, the following order is made:

1. The name of Arnold Mkhabela (hereinafter referred to as the "First Respondent") is removed from the roll of legal practitioners.
2. The first Respondent is to deliver his certificate of enrolment as a legal practitioner to the Registrar of this Court.
3. In the event of the First Respondent failing to comply with the terms of this order above within two weeks from the date of this order, the sheriff of the

district in which the certificate is, is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Court.

4. The Respondents are prohibited from handling or operating on any trust accounts as detailed in paragraph 5 hereof.
5. The person who occupies the office of the director of the halting provincial office of the applicant, for the time being be appointed as curator bonus to administer and control the trust accounts of the respondents including accounts relating to insolvent and deceased estates and any deceased state and any state under curatorship connected with the first respondents practice as a legal practitioner and including also the separate banking accounts opened and kept by respondents at the bank in the Republic of South Africa in terms of section 86(1) & (2) of Act No. 28 of 2014 and/or any separate savings or interest bearing accounts as contemplated by section 86(3) and/or section 86(4) of Act No.28 of 2014, 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 said accounts being hereinafter referred to as the trust accounts), with the following duties:

- 5.1 Immediately to take possession of the Respondents' accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control (the Fund") to sign all forms and generally to operate upon the trust accounts,

but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the Respondents were acting at the date of this order.

5.2 subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control 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 having lawful claims upon the trust account(s) and/or against the Respondents in respect of monies held, received and/or invested by the Respondents in terms of section 86(1) & (2) and/or section 86(3) and/or section 86(4) of Act No 28 of 2014 (hereinafter referred to as 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 Respondents were 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 Respondents' accounting records the names of all persons on whose account the Respondents appear to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon the First Respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he 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 he may require to enable him, acting in consultation with, and subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondents and, if so, the amount of such claim;

5.5 to admit or reject, in whole or in part, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;

5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

5.7 in the event of there being any surplus in the trust account(s) of the Respondents 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 claim of the fund in terms of section 86(5) of Act No 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondents, the costs, fees and

expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by the Respondents to the 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 Legal Practitioners' Fidelity Fund Board of Control, to the First Respondent, if he is solvent, or, if the First Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the Respondents, in accordance with the available documentation and information, to pay in full the claims of 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;

5.9 subject to the approval of the chairman of the Legal Practitioners' Fidelity Fund Board of Control, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

5.10 to render from time to time, as curator, returns to the Legal Practitioners' Fidelity Fund Board of Control showing how the trust account(s) of the Respondents has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That the Respondents immediately deliver the accounting records, records, files and documents containing particulars and information relating to:

6.1 any monies received, held or paid by the Respondents for or on account of any person while practising as a legal practitioner;

6.2 any monies invested by the Respondents in terms of section 86(3) and/or section 86(4) of Act No 28 of 2014;

6.3 any interest on monies so invested which was paid over or credited to the Respondents;

6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the Respondents, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

6.5 any insolvent estate administered by the Respondents 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 Respondents 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 provisions of the Companies Act, No 61 of 1973 read together with the provisions of the Companies Act, No 71 of 2008, administered by the Respondents 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 the Respondents as or on behalf of the liquidator;
and

6.9 the First Respondent's practice as a legal practitioner of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the Respondents shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

7. That should the Respondents fail to comply with the provisions of the preceding paragraph 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 the Respondents (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 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 firm;

8.2 require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the Respondents and/or the Respondents' clients and/or fund in respect of money and/or other property entrusted to the Respondents 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 wind-up of the First Respondent's practice.

9. That the First Respondent be and is hereby removed from office as:

9.1 executor of any estate of which the First 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);

9.2 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;

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

9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973 and read together with the provisions of the Companies Act, No 71 of 2008;

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

9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

9.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.

10. That the Respondents be and are hereby directed:

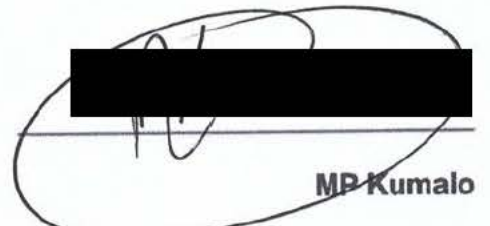
10.1 to pay, in terms of section 87(2) of Act No. 28 of 2014, the reasonable costs of the inspection of the accounting records of the Respondents;

- 10.2 to pay the reasonable fees of the auditor engaged by Applicant;
- 10.3 to pay the reasonable fees and expenses of the curator, including travelling time;
- 10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 10.6 to pay the costs of this application on an attorney-and-client scale.

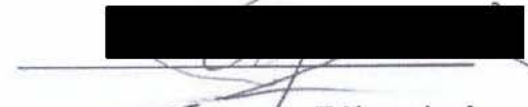
11. That if there are any trust funds available the Respondents shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to the First 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.

12. 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 authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

13. The respondents are to pay the costs of this appeal on an attorney and client cost.


MP Kumalo
Judge of the High Court

I agree,


T Nyandeni
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: M Moolmaan

Instructed by: Damons Margadie Richardson Attorneys

For the defendant: D Mstweni

Instructed by: Frans Mashele Incorporated