IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 4001/2024

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL **APPLICANT**

And

MASILO JOHN KOENANE **DEFENDANT**

[ID No: 6[…]]

Neutral citation: *The South African Legal Practice Council v MJ Koenane* (4001/2024) [2025] ZAFSHC 268 (29 August 2025)

Coram: Van Zyl J *et* Mpama AJ

Heard: 20 February 2025

Delivered: 29 August 2025

Summary: Application to have respondent attorney be struck from the roll of legal practitioners; alternatively, be suspended from the roll. Not fit and proper person to practice as an attorney. Respondent struck from the roll of legal practitioners.

ORDER

1 The respondent, Mr John Masilo Koenane ('the respondent'), is struck from the roll of legal practitioners of the High Court of South Africa.

2 The respondent shall immediately surrender and deliver to the Registrar of this court his certificate of enrolment as a legal practitioner of the Court.

3 In the event of the respondent failing to comply with the previous paragraph of this Order, the sheriff be and is authorized and directed to take possession of the certificate and hand it to the Registrar of this Court.

4 The respondent is prohibited from handling and operating on his accounts as detailed in para 5 below.

5 Mrs Margarette Kwakye, being the Director of the Provincial Legal Council of the Applicant; alternatively, the Acting Director and/or Nominee of the Provincial Legal Council of the applicant be and is appointed as the *Curator Bonis* to administer and control the trust accounts of the respondent and any account 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 s 86(1) of the LPA and/or any separate savings or interest-bearing accounts as contemplated by s 86(3) and/or s 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 said accounts being hereafter referred to as '*the trust account*') with the following powers and duties:

(a) Immediately to take possession of the respondent's accounting records, records, files and documents in relation to his 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;

(b) Where monies have been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interest 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 s 86(1) and/or s 86(3) and/or s 86(4) of the LPA (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 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);

(c) 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 (hereinafter referred to as '*trust creditors*') and to call upon the respondent to furnish him, within 30 (thirty) days after date of service of this Order or such further period as he may agree to in writing with the names and addresses of and the amounts due to all trust creditors.

(d) To call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require to enable him 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;

(e) Except where a trust deficit is determined, to admit or reject, in whole or in part subject to the approval of the LPFF Board, the claims of any such trust creditor, without prejudice to such trust creditor's right of access to the civil courts;

(f) 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;

(g) 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 interest due to the Legal

Practitioners' Fidelity Fund in terms of s 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 authorized representative/trustee/executor subject to the terms contained in this Order;

(h) 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;

(i) 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

(j) To render from time to time, as Curator, returns to the applicant shown how the trust account(s) of the respondent has/have been dealt with.

6 That the respondent immediately delivers his/her said accounting records, records, files and documents containing particulars and information relating to:

(a) Any monies received, held or paid by the respondent for or on account of any person while practising as an attorney;

(b) Any monies invested by the respondent in terms of s 86(3) and/or s 86(4) of the LPA;

(c) Any interest on monies so invested which was paid over or credited to the respondent;

(d) 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;

(e) Any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act 24 of 1936;

(f) Any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act 57 of 1988;

(g) Any company liquidated in terms of the Companies Act 71 of 2008, administered by the respondent as or on behalf of the liquidator;

(h) Any close corporation liquidated in terms of the Close Corporations Act 69 of 1984, administered by the respondent as or on behalf of the liquidator; and

(i) The respondent's practice as an attorney of this 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 failed to comply with the provisions of the preceding paragraph of this Order the sheriff for the district in which such accounting records, records, files and documents are, be and is empowered and directed to search for and to take possession thereof wherever they may be and deliver them to such Curator.

8 That the respondent be and is hereby removed from office as –

(a) Executor of any estate of which respondent has been appointed in terms of s 54(1)*(a)*(v) of the Administration of Estates Act 66 of 1965 or the estate of any other person referred to in s 72(1) thereof;

(b) Curator or guardian of any minor or other person's property in terms of s 72(1) read with s 54(1)*(a)*(v) and s 85 of the Administration of Estates Act 66 of 1965;

(c) Trustee of any insolvent estate in terms of s 59 of the Insolvency Act 24 of 1936;

(d) Liquidator of any company in terms of s 379(2) read with 379*(e)* of the Companies Act 71 of 2008;

(e) Trustee of any trust in terms of s 20(1) of the Trust Property Control Act 57 of 1988;

(f) Liquidator of any close corporation appointed in terms of s 74 of the Close Corporations Act 69 of 1984;

(g) Administrator appointed in terms of s 74 of the Magistrates' Court Act 32 of 1944.

9 That the Curator shall be entitled to:

(a) 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;

(b) 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;

(c) Publish this Order or an abridged version thereof in any newspaper he/she considers appropriate;

(d) 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 him/her (respondent) in respect of his/her former practice and should he/she fail to do so, he/she shall not be entitled to

recover fees and disbursements from the Curator without prejudice, however to such rights, if any, as he/she may have against the trust creditor(s) concerned for payment of recovery thereof.

11 A bill of costs is to be drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court (who is authorized to do so) *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 the reasonable fees and disbursements ('the curatorship fees and disbursements') and that the Registrar be authorized 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 In the event of the respondent failing to comply with any of the provisions referred to in this Order, the applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South Africa, Act 106 of 1996, for the appropriate relief against the respondent including but not limited to an Order for the committal of the respondent to prison for the respondent's contempt of the provisions of the abovementioned paragraphs.

14 The respondent be and is hereby directed:

(a) To pay, in terms of ss 87(2)/37(2)*(a)* of the LPA, the reasonable costs of the inspection/investigation of the accounting records of the respondent;

(b) To pay the Curatorship fees and disbursements (obtained the appropriate scale for attendances by the Curator and to consider whether or not to include the rate in the Court Order);

(c) To pay the expenses relating to the publication of this Order or an abbreviated version thereof; and

(d) To pay the costs of this application on an attorney and client scale.

JUDGMENT

Van Zyl J (Mpama AJ concurring)

[1] The South African Legal Practice Council ('the applicant') approached Court for an order that Mr John Masilo Koenane ('the respondent') be struck, alternatively, be suspended from the roll of legal practitioners, together with ancillary relief.

[2] The respondent is a legal practitioner enrolled as a practising attorney and practices under the name and style Koenane Attorneys in Bloemfontein.

Background facts:

[3] Mr Bonakele Pitso ('Mr Pitso'), acting in his own interest and on behalf of thirty-one individual complainants (collectively 'the complainants') lodged a complaint with the applicant against the respondent.

[4] The complainants were dismissed by the Kopanong Local Municipality and their legal challenge to the fairness of their dismissal had progressed to the Labour Appeal Court. The complainants instructed the respondent to act on their behalf in the appeal, for purposes of which they paid a deposit of R25 000.00 upfront to the respondent upon his request. The respondent failed to carry out his mandate and he has not accounted for the funds that he received.

[5] The respondent was twice requested by the applicant to reply to the complaint, but these requests went unanswered. The respondent was thereafter called upon to appear before the applicant's Investigating Committee on 3 March 2023.

[6] The respondent indeed appeared before the Investigating Committee, during which appearance he, *inter alia*, undertook to draw up a statement of account and

look for notes regarding the relevant appeal in his office ‘dummy file’. He was to again appear before the Investigating Committee on 6 March 2023 and undertook to then furnish the said Committee with the aforesaid documents.

[7] The Investigating Committee convened on 6 March 2023, but the respondent failed to appear and failed to provide the documents that he had promised to submit. The Investigating Committee determined that there was *prima facie* evidence of misconduct on the part of the respondent and recommended that the complaint be referred to the applicant’s Disciplinary Committee for adjudication in terms of s 37(3)*(a)* of the Legal Practice Act, 28 of 2014 (‘the Act’).

[8] The disciplinary proceedings were held on 13 December 2023. The respondent did not attend the hearing and the hearing continued in his absence in accordance with Rule 41.1 of the South African Legal Practice Council Rules (‘the Rules’). The respondent was found guilty on the following charges levelled against him:

(a) Charge 1, a breach of Provision 16.1 of the Code of Conduct for All Legal Practitioners Candidate Legal Practitioners and Juristic Entities (‘the Code of Conduct’), for failing to reply to communications from the applicant which required an answer within a reasonable time and/or a good cause for a refusal to answer.

(b) Charge 3, as alternative to charge 2, a breach of provision 3.4 of the Code of Conduct, for failing to honour the undertaking the respondent made before the Investigating Committee on 3 March 2022 to furnish the applicant with his written response to the complaint as well as a copy of his office file on or before 6 March 2022.

(c) Charge 4, a breach of Rule 54.11 of the Rules in that trust money was deposited into the respondent’s business banking account, which was paid to the respondent between 28 March 2020 and 3 April 2020 in several increments of R500.00 to R2 000.00.

(d) Charge 5, a breach of Rule 54.14.7.2 of the Rules, for failing to deposit the money which the respondent received from the complainants between 28 March

2020 and 3 April 2020 into his trust banking account on the date of receipt of such monies and/or the first following banking day.

(e) Charge 6, a breach of Rule 54.12 of the Rules, for failing to account to the complainants within a reasonable time after the performance or earlier termination of any mandate, in writing, specifying all amounts received, all disbursements and other payments made, all fees charged and raised against the respondents, as well as the amount owing to or by the respondent.

[9] In view of the aforesaid findings, the Disciplinary Committee recommended that the respondent be struck from the roll of legal practitioners and on 9 March 2024 it was resolved that such an application be brought to Court.

Applicable general principles:

[10] The general approach to be followed in an application such as the present, are set out as follows in *South African Legal Practice Council v Melato* [2021] ZAFSHC 305:

'[10] When the court considers an application of this kind, it follows a three-stage inquiry: see, *inter alia*, *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA); *Malan & Another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA).

[11] Firstly, the court has to decide whether the alleged offending conduct has been established on a preponderance of probabilities. It is a factual enquiry.

[12] Secondly, the enquiry is whether the person concerned is, in the discretion of the court, not a fit and proper person to continue to practice or should be suspended from practice. This requires the court to exercise a discretion that involves a weighing up of the conduct complained of against the conduct expected of a legal practitioner, and in this regard it is partly value judgment and partly objective fact.

[13] Thirdly, the court enquires whether in all the circumstances of the matter the person in question ought to be removed from the roll of practitioners or whether an order of suspension from practice for a specified period might suffice. Again, this involves the exercise of a discretion as to whether the ultimate penalty is warranted in the circumstances.

[14] . . .

[15] Each case depends on its own circumstances. The entire inquiry is of a disciplinary nature, and how the court conducts the inquiry depends on the circumstances of the case. (See *Solomon v Law Society of the Cape of Good Hope*, 1934 A.D. 401 at 412.)'

[11] The principles to be applied in an application against a legal practitioner to have his name struck from the roll of legal practitioners, are stated in *Hepple v Law Society of the Northern Provinces* [2014] 3 All SA 408 (SCA) to be the following:

'[9] In considering whether a case has been made out against an attorney sought to be struck from the roll it is necessary to bear in mind that the evidence presented by the law society is not to be treated as though one was dealing with "a criminal case" or "an ordinary civil case". The proceedings in applications to strike the name of attorneys from the roll are not ordinary civil proceedings. They are proceedings of a disciplinary nature and are *sui generis*. It follows, therefore, that where allegations and evidence are presented against an attorney they cannot be met with mere denials by the attorney concerned. If allegations are made by the law society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside; the attorneys are expected to respond meaningfully to them and to furnish a proper explanation of the financial discrepancies as their failure to do so may count against them.'

The applicant`s version:

<u>The complaint:</u>

[12] In terms of the complaint, the complainants mandated the respondent on 9 February 2020 to represent them in the aforementioned appeal matter. For purposes of this, the respondent required an upfront payment of R25 000.00 to be paid into a bank account number ending with the numbers 7193. Photographs of the bank deposit slips attached to the complaint form are proof of some of the payments made.

[13] In terms of the complaint the respondent failed to carry out his mandate and when the complainants followed up regarding the status of the matter, the respondent undertook that he would contact them, but never did.

[14] To date the respondent has failed to account to the complainants in respect of the aforesaid mandate.

<u>The respondent's failure to respond to the applicant regarding the complaint:</u>

[15] In a letter dated 17 March 2022, which the applicant sent to the respondent on 22 March 2022, the respondent was requested to reply to the complaint on or before 19 April 2022. It was sent by e-mail to koenaneattorneys@gmail.com, which is the e-mail address that the respondent had provided to the applicant. The request went unanswered.

[16] On 18 August 2022 the applicant sent a follow up letter to the respondent, dated 17 August 2022, in which the respondent was forewarned that a failure to timeously respond to communications from the applicant in itself constituted a breach of the Code of Conduct. The letter was e-mailed to the aforesaid e-mail address. The respondent again failed to respond to the e-mail.

The respondent's appearance before the Investigating Committee:

[17] Consequent to the respondent's failure to respond to the complaint, he was called upon to appear before the Investigating Committee on 3 March 2023. This was done by means of a notice which was also e-mailed to koenaneattorneys@gmail.com.

[18] The respondent attended the investigation, during which the Investigating Committee questioned the respondent about both his failure to respond to the applicant's request for a reply to the complaint and the merits of the allegations in the complaint.

[19] With regard to the respondent's failure to respond to the applicant, the respondent informed the Investigating Committee that although he does not deny that the letters of 17 March 2022 and 17 August 2022 were indeed sent to him, he was unaware of them.

[20] In the report of the Investigating Committee, dated 7 March 2023, attached to the founding affidavit as annexure 'FA5', it was stated that the payments which the complainants made into an account of Koenane Attorneys, FNB account, was an account ending with the numbers 7193. The records of the applicant reflect that the trust account of Koenane Attorneys is also a FNB account, but ends with the numbers 8985.

[21] According to the said report of the Investigating Committee, the respondent was given an opportunity to peruse the content of the complaint and he responded as follows:

'10.1 He submitted that funds were deposited to him by the complainants.

10.2 He gave a background of the instruction received being a Labour Appeal matter.

10.3 He travelled to Kopanong Municipality to consult with the complainants on a way forward.

10.4 He submitted further that more information was to have been handed over to him in order to proceed with this instruction.

10.5 At first, he submitted that the deposit requested from the complainants were deposited into his trust account, he then later transferred the funds to his business account.

10.6 Upon questions from the Committee Members, he then changed his submission and stated that he requested the complainants to deposit directly into his business account instead, although no work had been done and neither was any statement of account/invoice provided drawn up. This status *quo* remained until the date he appeared on 3 March 2023. He indicated that he will be able to draw up an account and furnish the Committee with it on the 6th of March 2023 at 14h00.

10.7 He furthermore submitted that the funds were all used up at this stage.

10.8 He then continued to indicate to the Committee that he had not opened a file for this matter at all. He then, after questioning, indicated that he has a 'dummy' file in which he keeps all his notes but he is not sure if the notes for this matter is in there. He will have to go and look and furnish the Committee on the 6th of March 2023 at 14h00 with the notes.

10.9 The Committee then continued to question him on his accounting system to which he responded by saying that he has no electronic accounting system and does everything manually. When questioned about his manual system he could not explain to the Committee his manual system for allocation of funds to matters. In fact, he stated that since COVID he elected to have clients deposit funds directly into his business account.

10.10 The matter was then postponed to the 6th of March 2023 for the practitioner to furnish the Committee with a statement of account/invoice indicating the work done and his file/notes. The practitioner undertook to be present on the 6th of March 2023 at 14h00 and bring with the documents as requested.

10.11 On 6 March 2023, the Committee waited for the practitioner to avail himself until 16h00. He failed to appear and honour his undertaking.'

[22] As previously mentioned, the Investigating Committee thereupon referred the complaint for adjudication in terms of s 37(3) of the Act.

<u>The disciplinary hearing:</u>

[23] According to the applicant the respondent was properly notified of the disciplinary hearing to be held on 13 December 2023, but despite such notification he failed to appear at the hearing and the hearing continued in the respondent's absence in accordance with Rule 41.1 of the Rules.

[24] During the disciplinary hearing the complainant was called to testify in relation to the merits of the complaint. According the applicant`s founding affidavit, his evidence can be summarised as follows:

'31.1 The complainants were dismissed by the Municipality and instructed the respondent to assist them with the appeal case;

31.2 The respondent required an upfront payment of R25 000.00 from the complainants and nominated FNB account number … 7197 into which the payment had to be made;

31.3 Between them, the complainants collectively paid the required amount of R25 000.00. The photographs of the bank deposit slips attached to the complaint form are proof of some of the payments;

31.4 After respondent was instructed and paid by the complainants, they could not make contact with the respondent;

31.5 The respondent never responded to their calls or made any endeavours to schedule consultations with them.'

[25] Mr Hanware, the chairman of the Investigating Committee, was also called to testify at the disciplinary hearing in respect of the proceedings before the Investigating Committee. He confirmed the authenticity and the veracity of the report of the Investigating Committee, attached to the founding affidavit as annexure 'FA6'.

[26] The judgment delivered in the disciplinary hearing, dated 22 January 2024, is attached to the founding affidavit as annexure 'FA8'.

[27] I have already recorded the respective charges on which the respondent was found guilty.

[28] It was subsequently found during the disciplinary hearing that the respondent is unfit to be a legal practitioner and the Disciplinary Committee recommended that the respondent be struck from the roll of legal practitioners.

The respondent's version:

<u>The respondent's failure to respond to the complaint:</u>

[29] Other than the explanation the respondent gave before the Investigation Committee that he does not deny that the relevant letters of 17 March 2022 and 17 August 2022 were indeed sent to him, but that he was unaware of them, the respondent failed to give any other explanation for his failure in this regard in his answering affidavit.

<u>The Investigation Committee:</u>

[30] I have already partly dealt with the respondent's version of the relevant events which he gave to the Investigating Committee.

[31] On his own version in his answering affidavit, the respondent stated as follows at p.118, para 8.1:

'The respondent appeared before the Investigating Committee and testified that he requested the complainants to pay him an amount of R25 000. *The amount was paid in instalments ranging from R500 to R2 000 occasioned between the 30th of March 2020 and 4 April 2020* although for the record it should be clear that the contested amount is R13 000.00.' (Own emphasis)

[32] By necessary implication, the respondent's statement amounts to an admission that he received the full R25 000.00. Had he intended to convey that he only received R13 000.00, one would have expected him to have said such before the Investigating Committee. The Investigating Committee was constrained, due to the absence of all the deposit slips, to accept that R13 000.00 was paid over to the respondent. The respondent is now latching on to the Investigating Committee's finding in this regard. For purposes of this application we will therefore accept that the respondent received R13 000.00 as deposit from the complainants.

<u>Further version of the respondent in his answering affidavit in respect of money received:</u>

[33] In addition to his confession before the Investigating Committee, the respondent admitted under oath in his answering affidavit that he instructed the complainants to pay the money into his [business] bank account. In this regard he stated as follows at para 5.2 of his answering affidavit:

'I would like to assert that I told the complainant[s] that they should deposit the money into <u>my bank account</u> as they simply had to cover the disbursements as from the onset I had to spend money to drive from Bloemfontein and where they were, which is Trompsburg. I will also deal with factual inaccuracies pertaining to the amount. Secondly, I had to advise the clients and take a mandate in a meeting that resembled town meeting from 10h00 to 16h00. Thirdly, I had to drive twice to Johannesburg Labour Court to get documents pertaining to the said matter and spent time to get relevant documents in our High Court, especially the Settlement document that I was told I had to upturn. All these stem from the fact that the clients had given me nothing more than bare documents that I have included as referring documents. . . . '(Own emphasis.)

[34] According to the respondent the money which he received from the complainants, was not trust money, but money for purposes of paying for disbursements. In this regard, the respondent sets out in his answering affidavit that he had to travel from Bloemfontein to Kopanong Municipality from 10h00 to 16h00 and that the costs in relation thereto were R1 140.40 when calculated at the AA rate per kilometre which was applicable in 2020. The respondent then further states that he also had to make two trips to the Labour Court in in Gauteng in order to get copies of the Labour Court judgment and other documents in the case file. The first trip he

made ‘around’ 14 February 2020, the calculated costs of which were R4 419.07. He further states that he had to make the same trip again, which was ‘around’ 27 February 2020, the costs of which was R4 309.20. The respondent furthermore indicated that his fees for accepting the mandate and for the initial consultation with the person who was sent to arrange the meeting, as well as the consultation with the complainants, amounted to R10 496.00. The respondent then concluded as follows at paras 23 and 24 of his answering affidavit:

’23. When the totals due to the Practitioner are calculated they amount to R20 354.75 compared to the amount of R13 000.00, as per the receipts attached to the papers of the applicant, that was paid after respondent had undertaken the abovementioned work and trips.

24. The respondent submits further that the difference between the two amounts would reflect that the complainant[s] actually owe an amount of R7 354.75 to the Practitioner.’

[35] There is no record of when the mentioned consultations took place, with whom, or what they entailed. The word ‘around’ evinces that no clear account as to when these alleged trips took place, is available. No contemporary supporting documents such as petrol slips, toll gate payments were presented either. The respondent stated at paragraph 20 of his answering affidavit that the consultation in Trompsburg took place from 10h00 to 16h00 with a group of the complainants. However, in the letter addressed by the respondent to the Disciplinary Chairperson, dated 5 May 2024, the respondent stated that the meeting was held from 09h00 to 15h00.

[36] In the very same letter of 5 May 2024, the respondent stated as follows:

‘I then sent a person to Johannesburg to go and fetch the necessary documents pertaining to this case. At that time I had not yet been paid by the client[s], although I will verify the date on which I sent a person to Johannesburg Labour Court.’

[37] In the last-mentioned explanation no mention is made of two trips and it is also not stated that the respondent personally undertook the trip to Johannesburg. The name of the person who was allegedly sent to Johannesburg, is also not mentioned, nor the date of the said trip.

[38] As previously indicated, it was stated at paragraphs 10.5 and 10.6 of the report of the Investigating Committee, that the deposit requested from the complainants

were deposited into the respondent's trust account, whereafter he later transferred the funds to his business account. The respondent however changed his version and stated that he requested the complainants to deposit the money directly into his business account, although no work had been done. Contrary to the aforesaid, the following was stated by the respondent in his aforesaid letter addressed to the disciplinary chairperson, dated 5 May 2024:

'At the time that the client[s] paid, I had already done the work outlined above. I therefore gave him/them my business account for my payment as I feel that I was entitled to that money, and that money was not meant for Trust account'.

[39] It was common cause during the meeting of the Investigating Committee that the respondent had failed to draw up a statement of account and to provide same to the complainants. He further indicated that he had not opened a file for the matter at all. After questioning he indicated that he has a 'dummy' file in which he keeps all his notes but he is not sure if the notes for this matter is in there. He undertook to furnish the committee with an account and with the dummy file during a meeting to be held on 6 March 2023. The respondent failed to appear before the investigating committee on 6 March 2023 and consequently failed to provide them with the documents which he undertook to do.

[40] The respondent has to date failed to provide a proper statement of account for work that had been done. He has also failed to provide any consultation notes and, subject to what follows *infra,* also failed to provide any documents, properly dealt with by the respondent, which had specifically been retrieved from the file at the Labour Court. The respondent has also clearly deposited money, which was supposed to have been deposited into his trust account on the day of receipt thereof or the first banking day thereafter, into his business account.

The respondent's failure to carry out his mandate:

[41] According to the respondent, during his second trip to the Labour Court, he was given a file which he described as a 'mixed up' file. The respondent stated the following in paras 13 and 14 of his answering affidavit:

'13. That file reflected the correct case number but wrong citation of parties, and that only the latter part of the document had the correct case number with the correct citation of the parties. That particular part of the papers had an order which indicated that the order made on the 29th July 2014 is rescinded. Secondly, what was also attached to that court order was a letter from the office of the Labour Court to the Registrar indicating that the matter had been handed to Justice Nkutha-Nkontwana for her perusal and direction. It was clear that there was a mix up regarding the matter of Kopanong Local Municipality employees and the matter of The Director-General: Labour v Compound Securities.

14. This is what made me refer to this file when I spoke to the applicant party during the investigation to refer to it as a 'dummy' file. This file never had completed documents and it had forced me all stages to forage for information. The same was the case with the founding referral documents which consisted only of one paged documents.'

[42] The respondent is also hiding behind the COVID epidemic as an excuse to not have fulfilled his mandate and to not have given feedback to the complainants. He states that he and his family contracted COVID around October 2020 and he was hospitalized from 7 October 2020 to 11 October 2020. It took him about nine months to recuperate.

[43] One has to keep in mind that the mandate which the complainants gave to the applicant was about seven months before he contracted COVID.

[44] The annexures attached to the answering affidavit as annexure 'OO' and the medical annexures attached to the answering affidavit as "MKK1", both fall to be criticized, like the applicant duly did at paragraph 30 of its replying affidavit:

'30. The respondent has, without discernible method, attached a vast collection of documents to his affidavit in respect of which he has failed to make any clear or specific reference, nor does he explain their purpose or relevance to the issues at hand. This is not merely irregular, it is impermissible. It runs afoul of the well-established principle that a court and deponents cannot be expected to trawl through annexures in search of their significance or relevance. The consequence is that the respondent cannot rely on such documents.'

[45] The following extracts from the replying affidavit are also highly relevant regarding the respondent's failure to have fulfilled his mandate:

'35. The respondent's explanation is a fragmented series of events – ill defined visits to the Labour Court and vague references – only to stop abruptly short of explaining this essential point: what, if anything, was done thereafter in discharge of his mandate? This abrupt ending, coupled with the absence of any explanation for what was done in the aftermath of these issues, leaves the respondent's entire account fatally incomplete.

36. There is further, no indication that the respondent kept the complainants informed of any developments – most notably, any obstacles that might have affected the progress of their case. The respondent's explanation galvanizes the notion that the complainants were left completely in the dark as to the status of their matter.

37. While the lockdown and related restrictions imposed between March 2020 and April 2022 undoubtedly disrupted many aspects of life and work, this cannot serve as a blanket excuse for inaction.

38. There is no account of what, if anything, was done between the respondent's visit to the Labour Court on 27 February 2020 and the imposition of the level 5 lockdown on 26 March 2020.'

Alleged procedural unfairness:

<u>Absence at the disciplinary hearing:</u>

[46] According to the respondent, it constituted procedural unfairness when the Disciplinary Committee decided to continue with the disciplinary hearing in his absence. In this regard he stated as follows at para 29 of answering affidavit:

'29. The Disciplinary Committee upon realising that the Respondent is not before them, given the gravity and the magnitude of the charges, and in line with the principle of *audi alteram partem* should have either postponed the hearing, and subpoenaed the respondent or personally served the respondent a subpoena for his attendance.

30. This is considering the fact that one of the charges dealt with *misappropriation of trust funds monies* which is an offence which could lead to his possible removal from the roll of practicing attorneys.'

[47] When the totality of the papers are considered, it is evident that the respondent's version regarding his absence at the disciplinary hearing is contradictory.

[48] At para 28 of the answering affidavit the respondent states that the office of the applicant called him a day before the hearing to ascertain whether he would be appearing. He indicated that he was not aware that the matter was sitting on the 13th of December 2023 and that he was on his way to be with his family that had travelled to Johannesburg. This call, according to the respondent`s memory, was made between 13h00 and 15h00, and by a certain Makhotso. According to the respondent, he specifically indicated that he was leaving for Johannesburg and that he would not be able to attend the disciplinary hearing. Ms Makhotso, according to the respondent, said that she would relay the message to the relevant person. The respondent left the matter at that and joined his family in Johannesburg.

[49] In the letter previously referred to which the respondent addressed to the Disciplinary Chairperson, dated 5 May 2024, contrary to the last-mentioned version, the respondent stated as follows:

'I received a call from one of the staff members of the council between 12 and 13 December 2023 saying that I must attend a scheduled disciplinary hearing the following day. If my memory serves me well it was between 11h00 and 13h00.

I indicated that there was no way in which I could attend that hearing and requested that it should be rescheduled as I had already closed the office for the year and I was already going on vacation. My family had already left town.'

[50] However, in the replying affidavit the applicant fully dealt with the notice of the disciplinary hearing which was given to the respondent. I deem it necessary to quote from the replying affidavit:

'48. The notice of the disciplinary hearing was sent to the respondent on 22 November 2023 by the Senior Administrator – Regulatory of the Legal Practice Council, Ms Makgotso Menyatso ('Ms Menyatso'). The notice, together with the attached complaint, was e-mailed to 'koenaneattorneys@gmail.com', an e-mail address the respondent himself provided to the LPC. A copy of the covering e-mail and attached complaint is annexed marked "REP1".

49. Ms Menyatso subsequently made efforts to contact the respondent by phone to confirm that he had received the notice. However, her call went straight to voicemail. On the same day, she sent a follow-up e-mail to the respondent, seeking confirmation of receipt of the notice. Annexure "REP2" is a copy of this e-mail.

50. On 29 November 2023 Ms Menyatso sent the respondent a comprehensive bundle of documents intended for use at the hearing. This communication was similarly effected by e-mail. Annexure "REP3" is a copy of the covering e-mail. Furthermore, this e-mail contained an additional notice, dealing with the constitution of the disciplinary committee and identifying the prosecutor. A copy of this notice is annexed as "REP4". …

51. On 1 December 2023 Ms Menyatso made another attempt to contact the respondent, this time dialing both his cell phone number and the office number he had provided to the LPC. Once again, her efforts were unsuccessful. She then sent a further e-mail, asking the respondent to confirm receipt of the notice and requesting confirmation of his intention to attend the hearing. Annexure "REP6" is a copy of this e-mail.

52. In a letter addressed to Ms Menyatso dated 12 December 2023, but which only came to her attention the next morning, the respondent acknowledged that he received the e-mail [notifying him of the hearing] but that he is unable to do so in the final working week of December due to a professional commitment – specifically, an arbitration and a trial outside town. Annexure "REP7" is a copy of this e-mail. I point out *en passant* that this explanation is contradictory to the one advanced by the respondent in opposing this application.

53. On the morning of the hearing, 13 December 2023, Ms Menyatso succeeded in reaching the respondent on his cell phone. On this occasion, the respondent answered and stated that he was not aware of the hearing, that he was out of town and he would be unable to attend the hearing.

54. Ms Menyatso advised the respondent that, should he wish to request a postponement, he could do so either in person or through his appointed legal representative, but the respondent did neither. Ms Menyatso's confirmatory affidavit is annexed marked "REP8".

55. In light of the aforesaid the respondent's contention that he was not properly notified of the hearing is patently unfounded. ….

56. On a balanced conspectus of the facts, the respondent willingly failed to appear at the disciplinary hearing.'

[51] The relevant part of the aforesaid 'REP7' reads as follows:

'Kindly note that I have received your e-mail this past Friday.

I would like to attend to the above hearing as soon as possible. However, there is no way in which I can attend to this especially the last working week of December.

I am supposed to attend an arbitration at G4S involving Ms Natasha Jansen in the Thabo Bester matter. There is no way in which this matter can be postponed as it was postponed before. Besides, I will attend to one other trial outside town.

Kindly reschedule this. I can send you suitable dates.'

[52] In the circumstances I am convinced that the respondent received due and proper notice of the disciplinary hearing and he is clearly untruthful in his different versions which he attempted to present. The Disciplinary Committee was therefore within its rights to have continued with the hearing in the absence of the respondent.

<u>The respondent's proposed appeal:</u>

[53] The respondent's second complaint in respect of alleged unfair procedure, is that the applicant failed to furnish him with the records of the disciplinary hearing, in particular, the disciplinary hearing chairperson's report. The respondent asserts that this deprived him of pursuing an appeal against the hearing's outcome.

[54] However, it is evident from the replying affidavit that on 30 January 2024 Ms Menyatso e-mailed the respondent a letter, attached to which was a copy of the judgment of the disciplinary hearing. The e-mail is attached to the replying affidavit as annexure "REP9" and the accompanying letter is marked "REP10".

[55] The aforesaid letter of 30 January 2024, stated as follows:

'Kindly note that the Disciplinary Committee made a finding that you are guilty of misconduct.

Attached hereto is the report judgment as well as the sanction imposed against you.

You are furthermore advised of your right to appeal the outcome of the disciplinary committee to the Appeals Tribunal within 30 days in terms of Rule 44.1 read with Rule 44.3.1 of the Legal Practice Act, 28 of 2014, if you are aggrieved by the outcome'.

[56] The following averments in the answering affidavit in paragraph 42 of the answering affidavit is consequently devoid of all truth:

'. . . however, since January 2024 until 19 July 2024 I am not furnished with the report. The only time I am privy to the report, and its content, is on the 19th of July 2024 when I am served the application for my disbarment'.

[57] The respondent only lodged an appeal on 7 May 2024. He was thereupon advised that the appeal had lapsed.

[58] It is consequently evident that the respondent is the one who failed to take any timeous steps to impugn the outcome of his disciplinary hearing. It is not due to any conduct or failure on the part of the applicant.

The charges against the respondent:

[59] In view of the totality of the evidence dealt with above, I am satisfied on a preponderance of probabilities that the offending conduct in respect of each of the charges to which the applicant was found guilty, has been established.

Fit and proper person to practice as an attorney:

[60] As previously cited from *South African Legal Practice Council v Melato at* para 12, the enquiry is whether the person concerned is, in the discretion of the court, not a fit and proper person to continue to practice or should be suspended from practice. This requires a court to exercise a discretion that involves a weighing up of the conduct complained of against the conduct expected of a legal practitioner and in this regard it is a partly value judgment and partly objective test.

[61] In *South African Legal Practice Council v Nonxuba and Another* (16777/2023) [2024] ZAWCHC 410 (4 December 2004) at para 60 the court held that the success of our legal system depends upon the public having full confidence in the integrity of the members of the legal profession.

[62] In *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 655G to 656B the Supreme Court of Appeal, *inter alia,* held as follows:

'I share the view expressed in *Olivier*'s case *supra* at 500H *ad fin* that, as a matter of principle, an advocate who lies under oath in defending himself in an application for the removal of his name from the roll, cannot complain if his perjury is held against him when the question arises whether he is a fit and proper person to continue practising. I also support Heher J's observation in the present case that *(t)*he word of an advocate is his bond to his client, the court and justice itself. In our system of practice the courts, both high and low, depend on the *ipse dixit* of counsel at every turn.'

This is why there is a serious objection to allowing an advocate to continue practising once he has revealed himself as a person who is prepared to lie under oath. . . .The preservation of a high standard of professional ethics having thus been left almost entirely in the hands of individual practitioners, it stands to reason, firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them and, secondly, that a practitioner who lacks these qualities cannot be expected to play his part.

The applicant has been exposed as precisely such a person in a particularly illuminating way. He gave false information to a committee of the professional society to which he belonged. He committed perjury in his opposing affidavit. And he repeatedly did so again when he testified in Court.'

[63] In the matter of *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (T) at 395F to G, the court stated as follows:

'I refer next to the duty of an attorney in general. The attorney is a person from whom the highest standards are exacted by the profession and this Court. If an attorney wishes to digress from that standard he may do so, but he must then first cast aside his profession by resigning and then pursue his chosen course. He cannot serve two masters. …'

[64] Considering how the respondent dealt with the applicable trust money which the complainants paid to him upfront, his behaviour can be described to have been similar to that of the first respondent in *Law society of the Free State v Le Roux and Others* (3093) [2015] ZAFSHC 233 (30 November 2015) (*Le Roux*) at para 80:

'[80] The first respondent makes false statements without flinching and takes no responsibility for his actions. This court takes a dim view of an officer of the court who has no qualms in being untruthful to a court, for it demonstrates a lack of two important qualities that are the very essence of an attorney's profession: honesty and integrity. The attorney's profession is indeed "an honourable profession, which demands complete honesty and integrity from its members. In consequence, dishonesty is generally regarded as excluding the lesser stricture of suspension from practice, while the same can usually not be said of contraventions of a different kind."'

[65] The conduct of the respondent fell short of the aforesaid two crucial elements of being a fit and proper person to practice as an attorney, which are honesty and integrity.

[66] In my view the respondent is not a fit and proper person to practice as an attorney.

Sanction:

[67] In deciding on an appropriate sanction, the court is called upon to decide not what constitutes an appropriate punishment for past transgressions but rather what is required for the protection of the public. See *Law Society of Good Hope v Peter* 2009 (2) SA 18 (SCA) at para 18.

[68] In *Hewetson v Law Society of the Free State* 2020 (5) SA 86 (SCA) striking off was referred to as a default position in cases of dishonesty. In such cases, exceptional circumstances would have to be shown by the errant attorney to justify a suspension rather than striking off.

[69] A lack of insight by an attorney into what he did wrong would in itself be an important factor which reflects adversely on his character and is a weighty consideration in militating against lesser stricture than the removal from the roll.

[70] The following *dictum* at para 81 from *Le Roux* is also applicable in the present matter:

'His misconduct is therefore of a far more serious nature than that of the second and third respondents. He generally acted recklessly. He undoubtedly deserves a harsher sentence than the second and third respondents. Members of the public must be protected from attorneys of his ilk. The first respondent's failure to be accountable and his lack of honesty are seriously aggravating and have a bearing on the sanction. Having considered all the circumstances of the case, I have no doubt that the only appropriate sanction for the first respondent is for his name to be struck from the roll of attorneys.'

[71] When considering all the relevant facts and circumstances of this matter, I have no doubt that the only appropriate sanction for the respondent is that he be struck from the roll of legal practitioners.

Costs:

[72] The usual order in application such as the present is that costs are to be paid by the respondent on an attorney and client scale. The applicant is seeking such an order. There is no reason to deviate from the usual order.

[73] The following order is consequently made in accordance with the relief sought in the Notice of Motion:

1 The respondent, Mr John Masilo Koenane ('the respondent'), is struck from the roll of legal practitioners of the High Court of South Africa.

2 The respondent shall immediately surrender and deliver to the Registrar of this court his certificate of enrolment as a legal practitioner of the Court.

3 In the event of the respondent failing to comply with the previous paragraph of this Order, the sheriff be and is authorized and directed to take possession of the certificate and hand it to the Registrar of this Court.

4 The respondent is prohibited from handling and operating on his accounts as detailed in para 5 below.

5 Mrs Margarette Kwakye, being the Director of the Provincial Legal Council of the Applicant; alternatively, the Acting Director and/or Nominee of the Provincial Legal Council of the applicant be and is appointed as the *Curator Bonis* to administer and control the trust accounts of the respondent and any account 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 s 86(1) of the LPA and/or any separate savings or interest-bearing accounts as contemplated by s 86(3) and/or s 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 said accounts being hereafter referred to as '*the trust account*') with the following powers and duties:

(a) Immediately to take possession of the respondent's accounting records, records, files and documents in relation to his 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;

(b) Where monies have been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interest 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 s 86(1) and/or s 86(3) and/or s 86(4) of the LPA (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 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);

(c) 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 (hereinafter referred to as '*trust creditors*') and to call upon the respondent to furnish him, within 30 (thirty) days after date of service of this Order or such further period as he may agree to in writing with the names and addresses of and the amounts due to all trust creditors.

(d) To call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require to enable him 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;

(e) Except where a trust deficit is determined, to admit or reject, in whole or in part subject to the approval of the LPFF Board, the claims of any such trust creditor, without prejudice to such trust creditor's right of access to the civil courts;

(f) 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;

(g) 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 interest due to the Legal Practitioners' Fidelity Fund in terms of s 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 authorized representative/trustee/executor subject to the terms contained in this Order;

(h) 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;

(i) 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

(j) To render from time to time, as Curator, returns to the applicant shown how the trust account(s) of the respondent has/have been dealt with.

6 That the respondent immediately delivers his/her said accounting records, records, files and documents containing particulars and information relating to:

(a) Any monies received, held or paid by the respondent for or on account of any person while practising as an attorney;

(b) Any monies invested by the respondent in terms of s 86(3) and/or s 86(4) of the LPA;

(c) Any interest on monies so invested which was paid over or credited to the respondent;

(d) 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;

(e) Any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act 24 of 1936;

(f) Any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act 57 of 1988;

(g) Any company liquidated in terms of the Companies Act 71 of 2008, administered by the respondent as or on behalf of the liquidator;

(h) Any close corporation liquidated in terms of the Close Corporations Act 69 of 1984, administered by the respondent as or on behalf of the liquidator; and

(i) The respondent's practice as an attorney of this 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 failed to comply with the provisions of the preceding paragraph of this Order the sheriff for the district in which such accounting records, records, files and documents are, be and is empowered and directed to search for and to take possession thereof wherever they may be and deliver them to such Curator.

8 That the respondent be and is hereby removed from office as –

(a) Executor of any estate of which respondent has been appointed in terms of s 54(1)*(a)*(v) of the Administration of Estates Act 66 of 1965 or the estate of any other person referred to in s 72(1) thereof;

(b) Curator or guardian of any minor or other person's property in terms of s 72(1) read with s 54(1)*(a)*(v) and s 85 of the Administration of Estates Act 66 of 1965;

(c) Trustee of any insolvent estate in terms of s 59 of the Insolvency Act 24 of 1936;

(d) Liquidator of any company in terms of s 379(2) read with 379*(e)* of the Companies Act 71 of 2008;

(e) Trustee of any trust in terms of s 20(1) of the Trust Property Control Act 57 of 1988;

(f) Liquidator of any close corporation appointed in terms of s 74 of the Close Corporations Act 69 of 1984;

(g) Administrator appointed in terms of s 74 of the Magistrates' Court Act 32 of 1944.

9 That the Curator shall be entitled to:

(a) 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;

(b) 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;

(c) Publish this Order or an abridged version thereof in any newspaper he/she considers appropriate;

(d) 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 him/her (respondent) in respect of his/her former practice and should he/she fail to do so, he/she shall not be entitled to recover fees and disbursements from the Curator without prejudice, however to such rights, if any, as he/she may have against the trust creditor(s) concerned for payment of recovery thereof.

11 A bill of costs is to be drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court (who is authorized to do so) *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 the reasonable fees and disbursements ('the curatorship fees and disbursements') and that the Registrar be authorized 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 In the event of the respondent failing to comply with any of the provisions referred to in this Order, the applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South Africa, Act 106 of 1996, for the appropriate relief against the respondent including but not limited to an Order for the committal of the respondent

to prison for the respondent's contempt of the provisions of the abovementioned paragraphs.

14 The respondent be and is hereby directed:

(a) To pay, in terms of ss 87(2)/37(2)*(a)* of the LPA, the reasonable costs of the inspection/investigation of the accounting records of the respondent;

(b) To pay the Curatorship fees and disbursements (obtained the appropriate scale for attendances by the Curator and to consider whether or not to include the rate in the Court Order);

(c) To pay the expenses relating to the publication of this Order or an abbreviated version thereof; and

(d) To pay the costs of this application on an attorney and client scale.

C VAN ZYL
JUDGE OF THE HIGH COURT

I concur:

L MPAMA
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	WA van Aswegen
Instructed by:	Symington & de Kok Inc.
	BLOEMFONTEIN
	Ref: FXK2397/T O'Reilly
For the Respondent:	PS Mphuloane
Instructed by:	Koenane Attorneys
	BLOEMFONTEIN
	e-mail: koenaneattorneys@gmail.com