



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 914/2023

In the matter between:

MAREE & BERNARD ATTORNEYS

FIRST APPELLANT

NICOLAS PETRUS MAREE

SECOND

APPELLANT

and

THE SOUTH AFRICAN LEGAL

FIRST RESPONDENT

PRACTICE COUNCIL

THE ATTORNEYS FIDELITY FUND

SECOND RESPONDENT

Neutral citation: *Maree & Bernard Attorneys and Another v The South African Legal Practice Council and Another* (914/2023)
[2025] ZASCA 140 (29 September 2025)

Coram: DAMBUZA, MOLEFE and KGOELE JJA and HENDRICKS and MJALI AJJA

Heard: 11 September 2024

Delivered: 29 September 2025

Summary: Legal Profession – Legal Practice Act 28 of 2014 – whether bank accounts related to an investment practice conducted by a firm of attorneys in terms of Rule 55 of the Legal Practice Council Rules are trust accounts as

defined in s 86(4) of the Legal Practice Act – whether such bank accounts must be audited in terms of s 85 as a prerequisite for the issuing of a fidelity fund certificate to legal practitioners– interpretation of Rule 55 of the Legal Practice Council Rules – whether failure to have a Rule 55 investment account audited renders a legal practitioner not fit and proper to conduct legal practice.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Mbhele DJP with Molitsoane J, sitting as court of first instance):

1. The appeal is upheld with no order as to costs.
2. The order of the high court is set aside and replaced with the following order:

‘2.1 It is declared that the First Applicant’s investment accounts held with ABSA bank, account number 1[...] and account number 6[...] held with FNB, are not trust accounts that need compliance with the provisions of section 85 of the Legal Practice Act 28 of 2014.

2.2 The first respondent is ordered to issue the applicant with a Fidelity Fund Certificate for the period ending in December 2020.

2.3 The counter-application is dismissed.

2.4 There shall be no order as to costs.’

JUDGMENT

Hendricks AJA (Dambuza, Molefe and Kgoele JJA, and Mjali AJJA concurring):

[1] The second appellant in this appeal, Mr Nicolas Petrus Maree (Mr Maree) is the sole director of the first appellant, a firm of attorneys practicing as Maree & Bernard Attorneys Incorporated. The firm was previously a partnership between Messrs Maree and Bernard conducting an attorneys practice as Maree and Bernard Attorneys. On 30 June 2018, the partnership was wound up and

Maree & Bernard Attorneys Incorporated was established on 1 July 2018. A firm of chartered accountants, ARC Sakhile Chartered Accountants and Auditors Inc (ARC), audited the financial books of Maree & Bernard Inc for the financial year March 2017 to February 2018 and rendered a qualified audit report due to an investment bank accounts that were considered to be a second trust bank account. This bank account had not been audited. ARC reported that the alleged second trust bank account was not captured on the firm's pastel trust account system but on the pastel system of the Maree and Bernard partnership. The auditors reported that the bank account was not audited because Mr Maree informed them that it was not a trust account. They also regarded this matter as a 'major compliance issue' under s 78(1) of the Attorneys Act 53 of 1979 (the Attorneys Act) and s 86(3) of the Legal Practice Act 28 of 2014 (Legal Practice Act) because of an inscription 'trust account' on the bank account statements of the investment practice.¹

[2] On 18 May 2019, the first respondent, the South African Legal Practice Council (LPC)² took a resolution to suspend Mr Maree from practicing as an attorney. Following the resolution, the LPC launched an application in the Free State Division of the High Court, Bloemfontein (the high court) to have Mr Maree suspended from practicing as an attorney, pending an investigation into the alleged second trust bank account. Subsequent communication between the LPC and Mr Maree culminated in an agreement that an independent auditor, Mr Kotie Kruger, would be appointed to investigate the alleged second trust bank account. In his report Mr Kruger complained that Mr Maree and his firm were not complying with the agreement. As a result, he was unable to investigate the

¹ Under s 78(1) '[a]ny practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him or her on account of any person.'

² The South African Legal Practice Council (the LPC), is a national statutory body, established in terms of s 4 of the Legal Practice Act 28 of 2014 (the LPA).

contentious bank accounts. However, he reported that they were conducting an ‘investment practice’.

[3] Mr Maree persisted in his argument that the bank accounts were not a second trust bank account of his attorneys’ practice, but rather related to an investment business conducted by the firm which did not form part of the trust audit of his practice. He explained that apart from conducting a legal practice, his firm also carried on business as an investment practitioner. His auditors supported him, reporting that the transactions performed in the bank accounts were ‘totally removed from the attorneys’ business’. The contested bank accounts had been in operation for more than six years with a total of no less than 2613 transactions valued at approximately R66.5 million.

[4] Mr Maree argued that the ‘trust account’ description on the bank statements was a mistake on the part of the bank. He instructed the bank to rectify the error, which it did.³ Mr Maree refused to have the account audited as, according to him, it was totally and distinctively unrelated to the attorney’s practice of Maree & Bernard Inc. The LPC approached the high court with an application to suspend Mr Maree from practice. That application was settled. The LPC withdrew the application on condition that the appellants made a full disclosure and opened all its books for inspection by an independent auditor. However, the LPC remained of the view that a fidelity fund certificate was required in respect of the disputed bank account. Nevertheless, it issued Mr Maree with a fidelity fund certificate on a without prejudice basis for the year ending on 31 December 2019.

[5] In a subsequent report Mr Kruger stated that Maree and Bernard were conducting an investment practice which was not audited and therefore they

³ Removal of s 86(2) description.

were in violation of the LPC rules. The LPC refused to issue a fidelity fund certificate to Mr Maree and his firm although they were in possession of an unqualified audit reports in relation to their trust account for the year ending December 2020. The persistent disagreement led to Mr Maree launching an application in the high court seeking an order that LPC be compelled to issue him with a fidelity fund certificate for the year ending on 31 December 2020. He also sought a declarator to the effect that the contentious bank accounts did not relate to a trust account that had to be audited as required under s 85 of the Legal Practice Act. The LPC filed a counter-application seeking that Mr Maree and his firm of attorneys be suspended from practice and that he be interdicted from operating the contentious bank account until he was in possession of a valid fidelity fund certificate. The application was postponed on many occasions whilst auditor Mr Kruger inspected both the firm's trust books of account and the disputed bank account in order to report to the LPC as agreed between the parties.

[6] The matter was ultimately heard in the high court. The report from Kotie Kruger was late and the Court refused to accept it. The court rejected the LPC's argument that Mr Maree should have first challenged its decision not to issue a fidelity fund certificate to him, held under the Promotion of Administrative Justice Act 3 of 2000. It then held that the disputed accounts were indeed trust accounts which had to be audited in terms of s 85 of the Legal Practice Act. Consequently, the fidelity fund certificate could not be issued prior to the disputed bank account being audited, the court held. The court also held that Mr Maree was not a fit and proper person to practice as an attorney. Mr Maree's application was dismissed and the LPC's counter-application was upheld, with an order suspending Mr Maree from practicing as an attorney until a court found him to be fit and proper to practice, and a valid fidelity fund certificate was issued to him. The court granted an interdict prohibiting Mr Maree and/or

his employees from operating the bank accounts. It also ordered that an independent auditor be appointed by the LPC to perform an audit of the firm and Mr Maree's specified bank accounts. Mr Maree was also ordered to deliver his certificate of enrolment as an attorney, the firm's books of account, records, files and other specified documents, to the offices of the LPC. There were further ancillary orders. This appeal, with the leave of the high court, is against this order of the high court.

[7] In this appeal, the LPC contends that the matter is now moot because the appellants have ceased practicing. I do not agree. The high court's order remains extant together with finding that a practicing attorney who conducts an investment business must have the related investment bank account audited before he or she is issued with a fidelity fund certificate. The finding that Mr Maree is not fit and proper to practice as an attorney also remains extant.

[8] The question whether a person is fit and proper to practice as a legal practitioner is not necessarily based on failure to comply with the requirements for a fidelity fund certificate. Indeed, under s 24(2)(b)(ii) of the Legal Practice Act the question whether a person is fit and proper is a qualifier for admission to practice as a legal practitioner. This requirement essentially considers whether a person has integrity, honesty, reliability and has demonstrated commitment to the profession's dignity by upholding the law. The LPC assesses these qualities through a character screening process. The fitness and propriety test is aimed at protecting the members of the public and maintaining the integrity of the legal profession.

[9] On the other hand, the question whether a person qualifies to have a fidelity fund certificate issued to them is regulated under ss 84 and 85 of the Legal Practice Act. Sub-sections 84(1) and (2) compel practicing attorneys and

advocates, with certain exceptions, to be in possession of a fidelity fund certificate and not to receive or hold funds or property belonging to a person unless they are in possession of the certificate. Section 84 of the Legal Practice Act makes it an offence punishable with a fine or imprisonment for a legal practitioner to practice without a fidelity fund certificate. A declaration that a person is not fit and proper to be a legal practitioner must be preceded by a properly pleaded case to that effect.

[10] In *South African Legal Practice Council v Kgaphola and Another*⁴ this Court held that:

‘The proper approach to misconduct complaints against legal practitioners is well-established and has been applied in many cases.⁵ It is a three-stage enquiry. First, a court determines whether the complaint has been established on a balance of probabilities. This is a factual enquiry. If established, the court enquires whether the practitioner is fit to remain on the roll of legal practitioners. If he or she is not, the court must, in the third stage, determine a sanction: whether the legal practitioner’s name should be removed from the roll or merely be suspended from practice for a determinate period. In the second and third stages, a court exercises discretion.

The discretion exercised in the second and third legs of the enquiry is a strict one⁶. Thus, a court of appeal may only interfere if the discretion was not exercised judicially⁷. This means that a court of appeal is not entitled to interfere with the exercise by the lower court of its discretion unless it failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously, or exercised its discretion upon a wrong principle or as a result of a material misdirection.’⁸

⁴ *The South African Legal Practice Council v Kgaphola and Another* [2025] ZASCA 66 para 19-20.

⁵ *General Council of the Bar of South Africa v Geach and Others, Pillay and Others v Pretoria Society of Advocates and Another, Bezuidenhout v Pretoria Society of Advocates* [2012] ZASCA 175; [2013] 1 All SA 393 (SCA); 2013 (2) SA 52 (SCA) para 50; *Malan and Another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA); [2009] 1 All SA 133 (SCA) para 4; *Jasat v Natal Law Society* [2000] ZASCA 14; 2000 (3) SA 44 (SCA); [2000] 2 All SA 310 (A) para 10.

⁶ *Kekana v Society of Advocates of SA* [1998] ZASCA 54; 1998 (4) SA 649 at 654D-E; [1998] 3 All SA 577 (SCA) at 581.

⁷ *Vassen v Law Society of the Cape of Good Hope* [1998] ZASCA 47; 1998 (4) SA 532 (SCA) at 537D-F; [1998] 3 All SA 358 (A) at 361-362.

⁸ *Mabaso v Law Society of the Northern Provinces and Another* [2004] ZACC 8; 2005 2 SA 117 (CC); 2005 (2) BCLR 129 para 20; *Giddey NO v JC Barnard & Partners* [2006] ZACC 13; 2007 (5) SA 525 (CC); 2007 (2) BCLR 125 (CC) paras 20 and 21.

[11] In this case, the LPC never sought to make out a case to that effect about Mr Maree. The dispute was whether the bank accounts in question should have been audited as trust accounts as provided in s 85 of the Legal Practice Act. It is not clear how the high court reached the decision that Mr Maree was not fit and proper to practice. Clearly, the finding of the court to the effect that Mr Maree is not fit and proper to practice cannot be sustained.

[12] The next question is whether there is a proper basis for the conclusion that the investment business bank account falls within the provisions of s 85 of the Legal Practice Act and must be audited as a prerequisite for the issuing of a fidelity fund certificate.⁹ Again, it is not clear what reasoning led to the conclusion that the bank accounts related to the trust account of Mr Maree's practice, particularly when the Court did not consider the last report from Kotie Kruger auditors. Mr Maree insists that his practice had only one trust bank account. The investment bank account belonged to a different business conducted by the practice – a business that Maree and Barnard partnership had conducted before the firm's incorporation, from as far back as the 1960's. He stresses that previous audits never raised issue with the bank accounts because the investment account's yearly investment statements were sent to the National Credit Regulator (NCR) as per the relevant regulations.

[13] It is evident that the main reason why the LPC demanded that the investment bank accounts be audited as a prerequisite for the issue of a fidelity fund certificate is because it was of the view that they relate to the firm's trust investment bank account. In the past s 78 of the Attorneys Act regulated attorneys' practice trust accounts. Section 78(1) of that Act compelled

⁹ In terms of s 84(1) of the LPA, all legal practitioners must at all times be in possession of a valid fidelity fund certificate, which certificate is valid until 31 December of the year in which it has been issued.

practicing attorneys to open and keep a separate trust banking account at a banking institution and deposit into that bank account all money held or received on account of any person. Section 78(2)(a) provided that a practitioner could invest in a separate trust savings or any other interest-bearing bank account, any money deposited in their trust bank account, which was not immediately required for any particular purpose. Section 78(2A) provided that such trust savings or interest-bearing bank account would have a reference to the subsection; that is, the bank records and statements had to state that it is an account opened and managed in terms of s 78(2A) of the Attorneys Act. Under s 78(3) interest on moneys deposited under this subsection had to be paid over to the Fidelity Fund by the practitioner concerned as prescribed in the Attorneys Act, and the practitioner had to keep proper accounting records with particulars and information of any money received, held or paid by him or her from the invested funds and of any interest received by him or her from such invested funds. The s 78(2A) account was a trust investment account that had to be audited by a registered auditor to ensure compliance with the Attorneys Act. The audit was a requirement for the issue of a fidelity fund certificate to the practitioner concerned.

[14] Under the Legal Practice Act trust accounts and trust investment accounts are regulated under ss 84 (1) to (3), 85(1), 86 and 87 which prescribe the same administration regime as in the Attorneys Act. Section 86(3) of the Legal Practice Act provides that '[a] trust account practice may, of its own accord, invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose.' And s 86(4) which replaced s 78(2A) of the Attorneys Act provides for trust savings accounts or other interest bearing accounts which may be opened by trust practices on the instructions of any person for the purpose of investing therein any money deposited in the trust account of that practice on behalf of such

person over which the practice exercises exclusive control as a trustee, agent or a stakeholder or in any other fiduciary capacity.

[15] Section 87(1) provides that a trust account practice must keep proper accounting records in respect of money received and paid on its own account, money received, held or paid on account of any person, money invested in a trust account, or other interest-bearing account referred to in s 86. Section 87(3) defines what constitutes ‘accounting records’ for the purposes of s 87(1). These include money held in trust, money invested in terms of ss 86(2), (3), or (4) and interest thereon, any estate of a deceased person or any insolvent estate or any estate placed under curatorship in respect of which an attorney in the trust account practice is an executor, or the affairs of the trust account practice.

[16] Rule 55 of the LPC Rules regulates an investment practice that may be conducted by legal practitioners. The rule provides:

‘55.1 A firm shall for the purpose of this rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients and it controls or manages such investments, whether directly or indirectly

...

55.3 This investment practice rule shall not apply to;

55.3.1 investments made pursuant to section 86(3) of the Act, which are not transactions contemplated in investment practice rule 55.1

55.3.2 any investment of a temporary nature that is made in the course of and incidental to a conveyancing or other matter, including litigation, to which the investing client is a party;

55.3.3 investments made by attorneys in their capacity as executors, trustees, curators or in any similar capacity in so far as such investments are governed by any other statutory enactment or regulations;

55.3.4 any investment (other than referred to in investment practice rule 55.1) made with a bank in the name of that client alone and on the written instruction of that client’.

[17] Investments through a rule 55 investment practice are clearly distinct from those regulated under ss 85, 86 and 87 of the Legal Practice Act. The first indication of the distinction is the express exclusion under rule 55(3) of investments that are usually subject to audit requirements under s 86 – moneys held in trust practice accounts that are not immediately required for a particular purpose, temporary trust investments made by attorneys in relation to conveyancing or litigation, and moneys held by them in their capacities as trustees, executors and curators.

[18] The second evidence of the distinction appears in rule 55.4, which provides:

‘A firm conducting an investment practice shall obtain an investment mandate from each client before or as soon as possible after investing the funds for that client. The form of investment mandate shall contain a statement that the client acknowledges that monies so invested do not enjoy the protection of the [Fidelity] fund’. (emphasis supplied)

[19] Usually the fidelity fund certificate assures clients of legal practitioners that if their money is lost through theft or any dishonest conduct of their legal practitioner, they will recover the funds from the Legal Practitioners Fidelity Fund. Section 85(6) of the Legal Practitioners Act provides that the LPC must issue a fidelity fund certificate to a legal practitioner when satisfied that the applicant for the certificate has satisfied the requirements of the requirements. In terms of rule 47.7.2 of the LPC rules a trust audit certificate is a prerequisite for a fidelity fund certificate.¹⁰ Every application for a fidelity fund certificate must be accompanied by an audit certificate. The LPC does not provide any

¹⁰ The rule provides:

‘ 47.7 Every such application shall be accompanied by-

47.7.1 . . .

47.7.2 [I]n the case of a legal practitioner other one referred to in rule 47.7.1 [legal practitioners who are required to be in possession of the certificate for the first time] the certificate of the auditor in respect of an audit of his or her trust accounts that had been performed for the year ended immediately prior to the application’.

basis for its insistence on an audit certificate in the case in respect of accounts in respect of which no fidelity fund certificate is required.

[20] Instead in a submission made in its heads of argument the LPC maintains that Maree did not prove compliance with rules 58.8, 55.5, 55.6, 55.11.2, 55.7, 55.12, 54.31, 54.33, 54.14, 54.16.1 and 54.18, and s 86(4) of the LPA. These rules (excluding s 86(4)) pertain to report that legal practitioner who conduct investment practices under rule 55 must provide to clients on investments made, and separate trust account records and supporting documents that must be kept by the firm for five years in respect of each client, and which must be furnished to the client upon request. They also relate to restrictions applicable to certain investments, and compliance with the requirements of the Financial Advisory and Intermediary Services Act 37 of 2002. However, this is not the case that Mr Maree had to meet in the high court. The issue was whether the appellants operated a trust investment bank account that had to be audited for Mr Maree to be issued with a fidelity fund certificate. It is also clear from the judgment of the high court that its attention had been directed to non-compliance with the provisions of ss 86 and 87.

[21] Neither Chapter 7 (s 84 to s 91) of the LPA which deals with the handling of trust monies, nor the Rules of the LPC, in particular Rule 55, requires that a legal practitioner's investment practice bank account must be audited for purposes of a fidelity fund certificate. The finding of the high court in this regard cannot stand.

[22] Insofar as costs are concerned, the LPC argued that it has a statutory duty to approach a court for disciplinary action and is entitled to its costs on an attorney and client scale, even if unsuccessful.¹¹ However, my view is that in

¹¹ *Law Society of the Northern Provinces v Sonntag* [2011] ZASCA 204; 2012 (1) SA 372 (SCA) para 20.

circumstances such as this case, where the LPC, after numerous instances of being alerted to the nature of the investment practice account, had clearly not evaluated its stance and did not carefully consider the provisions of rule 55 a just, fair and appropriate costs order is that no order as to costs be made.

[23] In result, the following order is made:

1. The appeal is upheld with no order as to costs.
2. The order of the high court is set aside and replaced with the following order:
 - ‘2.1 It is declared that the First Applicant’s investment accounts held with ABSA bank, account number 1[...] and account number 6[...] held with FNB, are not trust accounts that need compliance with the provisions of section 85 of the Legal Practice Act 28 of 2014.
 - 2.2 The first respondent is ordered to issue the applicant with a Fidelity Fund Certificate for the period ending in December 2020.
 - 2.3 The counter-application is dismissed.
 - 2.4 There shall be no order as to costs.’

R D HENDRICKS
ACTING JUDGE OF APPEAL

Appearances

For the appellants: S Grobler SC

Instructed by Honey Attorneys, Bloemfontein

For the first respondent: D M Grewar

Instructed by: Azar & Havenga Attorneys, Bloemfontein.