



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 067274/2024

- (1) Reportable: Yes/No
(2) Of interest to other judges: Yes/No
(3) Revised/Not Revised

Date: 28 August 2025

Signature: _____

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

And

PRUDENCE CHILWANE

FIRST RESPONDENT

ZONICA LEANDA-MARSHA VILAKAZI (MTSHALI)

SECOND RESPONDENT

MTSHALI CHILWANE INCORPORATED

THIRD RESPONDENT

JUDGMENT

MAKHOBHA, J

- [1] In June 2024, the Applicant launched an urgent application to suspend the First and Second Respondents, or alternatively, that they be struck from the roll of legal practitioners.

- [2] On 11 July 2024, the Respondents consented to the granting of a *rule nisi* suspending the First and Second Respondents, with the return date set for 12 November 2024.

- [3] On 12 November 2024, the *rule nisi* was extended to 29 July 2025. Thereafter, on 27 June 2025, the Respondents complied with the Applicant's final request for documentation and submitted the external audit report.

- [4] On 29 July 2025, when the matter was heard counsel for both Respondents submitted to this Court that the First Respondent would accept any sanction imposed by the Court.

- [5] In respect of the Second Respondent, counsel submitted that she had played a minor role in the allegations and contraventions, she had no knowledge of what the First Respondent was doing.

- [6] Counsel submitted further that the Respondents admit the allegations and contraventions contained in the Applicant's affidavit.

- [7] In the discussion between the parties, it became apparent that the trust deficit, by the Respondents' own admission, amounted to R6 254 074,50 (Six Million Two

Hundred and Fifty-Four Thousand and Seventy-Four Rand, and Fifty Cents). This is confirmed in the Respondents' Answering Affidavit by the First Respondent.

- [8] A total amount owed to the Trust Creditors amounted to R7 279 924,39 (Seven Million Two Hundred and Seventy-Nine Thousand Nine-Hundred and Twenty-Four Rand and Thirty-Nine Cents).
- [9] Counsel for the Applicant submitted that the First and Second Respondents' conduct falls within the grounds for removal from the roll of legal practitioners as outlined in Section 31 of the Legal Practice Act.¹ It was submitted that the Respondents are unfit to continue practising as attorneys by reason of their failure to maintain proper trust account records, which constitutes a serious breach of their fiduciary duties as attorneys.
- [10] Counsel for the Applicant argued that the Second Respondent cannot be separated from the First Respondent regarding the different roles they might have played in the mismanagement of clients' funds.
- [11] In this regard, counsel placed reliance on the landmark decision in *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and others (Chueu Incorporated Attorneys)*.²
- [12] The Respondents have been practising without Fidelity Fund Certificates since 2024. Counsel for the Respondents did not dispute that they continued to practise notwithstanding their suspension from the roll of practising legal practitioners.
- [13] The offending conduct must be proved on a preponderance of probabilities. In this matter before the Court, the Respondents have admitted to the misconduct. This is the first stage of the enquiry.

¹ 28 of 2014.

² (459/22) [2023] ZASCA 112 (26 July 2023).

[14] Rule 54.19 of the South African Legal Practice Council Rules reads as follows:³

“Every partner of a firm, and every director of a juristic entity referred to in.... section 34(2)(b) of the Act, will be responsible for ensuring that the provisions of the Act and of those Rules relating to trust accounts of the firm are complied with”.

[15] The second enquiry is to determine whether the First and Second Respondents are fit and proper persons to continue practising as legal practitioners.⁴

[16] The third and final stage of enquiry is to determine, having regard to all the circumstances, whether the Respondents should be removed from the roll of legal practitioners or suspended from practice for a specific period.

[17] The SCA in *Chueu Incorporated Attorneys*⁵ stated the following:

“[26] Every director has a fiduciary duty towards the company of which it is a director. To plead ignorance of financial matters, when faced with allegations of misappropriation, does not absolve a director. It has been emphasised over the years that legal practitioners cannot escape liability by contending that they had no responsibility for the keeping of the books of account or the control and administration of the trust account. As this court stated in Hepple v Law Society of the Northern Provinces, for an attorney to explain trust deficits on the grounds that he or she had no involvement in the financial affairs of the firm ‘is no defence at all’.

[27] Abdication of responsibilities does not absolve legal practitioners of their duties. As far back as Incorporated Law Society, Transvaal v K and Others, the court cautioned attorneys who attempted to excuse their conduct on the basis

³ GG 41781 20 July 2018 176. Legal Practice Act, rules and regulations came into effect on 1 November 2018.

⁴ *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) at para 10.

⁵ See above n.3 at para 26-27. See also *South African Legal Practice Council v Maree and Others* (4309/2024) [2024] ZAFSHC 352(31 October 2024) and *Hepple v Law Society of the Northern Provinces* [2014] ZASCA 75 [2014] 3 All SA 408 SCA at para 21.

that they were responsible for other work in the firm, and did not concern themselves with the books of account....”

[18] Counsel for the Respondents argued that the *Chueu Incorporated Attorneys*⁶ judgment referred to above concerned suspension rather than removal. This Court, with respect, disagrees. The judgment, in the Court’s view, was about the fiduciary duty irrespective of either suspension or removal.

[19] In *Chueu Incorporated Attorneys*,⁷ the Court further stated that it is not a defence for an attorney to plead that they had no involvement in the financial affairs of the firm.

[20] Furthermore, in terms of Rule 54.36,⁸ the Second Respondent was required to report to the council any dishonest or irregular conduct on the part of a trust account practitioner, which she failed to do. All directors of the firm have a duty to acquaint themselves with the firm’s accounting and financial affairs.

[21] In the Court’s view, the Second Respondent also owed a fiduciary duty to the legal practice firm and cannot be exonerated from the misconduct of the First Respondent.

[22] I find that the First and Second Respondents, in dealing with the Public’s funds, the Respondents did not act in good faith and were neither honest nor frank.

[23] In light of having misappropriated trust funds and the lack of adherence for a court order, the Court is of the view that the Respondents are no longer fit and proper persons to remain on the roll of legal practitioners.

⁶ See above n.3 at para 26-27.

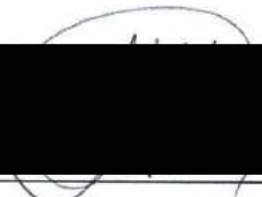
⁷ See above n.3 at para 26-27.

⁸ See above n.4.

[24] I am satisfied that the Legal Practice Council has sufficiently established that the First and Second Respondents' misconduct justifies an order of striking them off the roll of attorneys.

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

1. The First and Second Respondents are struck from the roll of legal practitioners.
2. Respondents must pay the costs of this application on Scale C.



D. MAKHOB A J
JUDGE OF THE HIGH COURT
PRETORIA



M. LENYAI J
JUDGE OF THE HIGH COURT
PRETORIA

This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email and by being uploaded onto CaseLines. The hand-down date is deemed to be 28 August 2025.

Date of Hearing: 29 July 2025

Judgment delivered: 28 August 2025

APPEARANCES:

For the Applicant:

S Manganye instructed by Mothle Jooma
Sabdia Incorporated

For the Respondent:

H Molotsi SC and P Moshoadiba instructed
by Langa Attorneys