



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 23138/2023

In the matter between:

**SOUTH AFRICAN LEGAL PRACTICE
COUNCIL**

APPLICANT

And

KAYLIN CAROLINE ENGELBRECHT

RESPONDENT

Neutral citation: *South African Legal Practice Council v Engelbrecht* (Case no 23138/2023) [2023] ZAWCHC ... (10 October 2025)

Coram: **DOLAMO AND NUKU JJ**

Heard: 5 September 2025

Delivered: 10 October 2025

Summary: Profession – Legal Practitioner – Advocate practising without a fidelity fund certificate - accepting monies from the public and misappropriating them – misleading the investigating committee and the complainant that she has paid the

funds – presenting the complainant with false proof of payment – prevailing upon the complainant to withdraw the complaint – such conduct is at odds with conduct to be expected of legal practitioners and deserving of the ultimate sanction.

ORDER

- 1 The name of the respondent is struck off the roll of legal practitioners;
- 2 The respondent is directed to surrender and deliver to the Director of the Western Cape office of the South African Legal Practice Council (“the Director”) in Cape Town her certificate of enrolment as an advocate;
- 3 If the respondent fails to comply with the provisions of paragraph b) above within 1(one) week from service of this Order, the Sheriff for the District in which such certificate may be, is empowered and directed to take possession of and deliver the same to the Director of the Western Cape office of the South African Legal Practice Council; and
- 4 The respondent is ordered to pay the costs of, and incidental to, this application on a scale as between attorney and client. Such costs are to include the costs of the counter-application.

JUDGMENT

Nuku J (Dolamo J concurring):

[1] The applicant applies, under section 44 of the Legal Practice Act 28 of 2014 (“the Act”), for the removal of the respondent’s name from the roll of legal practitioners.

[2] The applicant was established under section 4, read with section 120 of the Act. Its objects include regulating all legal practitioners as defined in the Act, enhancing and maintaining the integrity and reputation of the legal profession, and establishing, improving, and upholding appropriate standards of professional practice and ethical conduct for all legal practitioners.

[3] The respondent was admitted as an advocate of this Court on 13 October 2017. She is, under section 114 of the Act, considered to have been admitted in accordance with the Act and is therefore a legal practitioner as defined. She practices in the Western Cape as an independent advocate and does not maintain a trust account.

[4] This application stems from a complaint received by the applicant from Mr. Charles Gewalt (“Mr. Gewalt”) on 23 March 2020. Mr. Gewalt stated that he

deposited R223 739.25 into the respondent's bank account on 11 September 2018, after requesting the respondent's help with a property he was in the process of purchasing.

[5] The complaint form filled out by Mr. Gewalt has a section that requires the complainant to state the reasons for their dissatisfaction with the legal practitioner. In that section, Mr Gewalt recorded that:

‘We were told that she is waiting on this document and that document. On the 27th September 2019 she told me she used my money to buy machines for her boyfriend. Because I knew her for a few years I gave her a considerable amount of time to sort out this mess. She did not answer her phone or reply to messages. I had enough of her lies. The seller and myself had it with her now. My biggest concern now is am I going to get my 200k from this woman because at the moment she can't come up with my money. This whole process is standing still for a few months now because of her actions. All she do is cry now. She is a single mother and I thought of her daughter all the time and that is why I did not report the matter.’

[6] When the respondent was interviewed by a representative of the applicant's investigating committee on 17 November 2020, she stated that she had obtained a R160 000 loan, which the lender deposited into Mr. Gewalt's bank account. However, no such payment had been made. This was despite the respondent having forwarded to Mr. Gewalt what purported to be proof of payment of the sum of R160 000.

[7] According to the deponent to the founding affidavit, on 24 November 2020, Mr. Gewalt informed the applicant that the respondent had failed to pay him. He also

stated that he believed the purported proof of payment he received from the respondent was fraudulent and had been sent by the respondent in an attempt to prevent the disciplinary action against her from proceeding.

[8] The respondent, however, denies the statement made in the previous paragraph. To support her denial, she provides a detailed explanation of how Mr. Gewalt contacted the relevant lender, and which lender sent her the supposed proof of payment, which she then forwarded to Mr. Gewalt. I might note that this explanation has nothing to do with the allegation that Mr. Gewalt contacted the applicant on 24 November 2020 and made the statements he is alleged to have made.

[9] According to the respondent, she began making sporadic payments to Mr. Gewalt after he filed a complaint with the applicant.

[10] The applicant scheduled a disciplinary hearing against the respondent for 10 November 2021. One day before the hearing, the applicant received an email from Mr. Gewalt informing them that he was withdrawing the complaint because he had reached an agreement with the respondent and considered that agreement to be final and binding.

[11] The applicant informed the respondent that the hearing was continuing despite the settlement agreement between her and Mr. Gewalt. The respondent, however, was unable to attend due to medical reasons. The scheduling of the disciplinary

hearing was further delayed for reasons related to the respondent's medical condition.

[12] The disciplinary hearing against the respondent finally took place on 7 December 2022, where she pleaded guilty to two charges: (a) failing to account for funds received and failing to refund the funds at the complainant's request, and (b) misappropriation of R223 739.25.

[13] The respondent pleaded not guilty to three of the charges that were preferred against her. These were: (a) that she accepted funds directly from the public and without a brief; (b) that she undertook to perform the functions of an attorney, and (c) that she misrepresented to the investigating committee that she had refunded Mr Gewalt the sum of R160 000.

[14] The respondent was found guilty of the three additional charges. In reaching this verdict, the disciplinary committee made some concerning remarks, including that (a) the respondent had gone to great lengths to avoid the complaint hearing, (b) her sudden willingness to pay was a tactic to avoid the consequences of appearing before the applicant's investigating committee, (c) the agreement with the lender was staged, and (d) she misled the investigating committee by stating she had paid R160 000.

[15] Following representations regarding the sanction, the disciplinary committee recommended that the respondent be suspended from practice for three (3) years.

This suspension was conditionally suspended for three (3) years, provided that the respondent is not found guilty of unprofessional conduct during that suspension period. The recommendation also included ordering the respondent to pay a fine of R30 000 as well as the costs of the disciplinary hearing. Finally, it was recommended that the respondent complete certain courses on Practice Management and Ethics.

[16] The applicant accepted the disciplinary committee's guilty finding. However, it did not accept the recommendation regarding punishment. Instead, it resolved to bring the matter before this Court for the Court to exercise its disciplinary authority over the respondent, as one of its officers.

[17] The application was issued on 19 December 2023 and served on the respondent on 30 September 2024. The respondent, in addition to opposing the application, filed a counter-application seeking to review and set aside the applicant's decision to initiate the process of striking her name from the roll of practitioners.

[18] In the part of her affidavit discussing the grounds for her review of the applicant's decision, she stated that the applicant's decision to pursue this application denied her the right to appeal the disciplinary committee's findings, as outlined in section 40(1)(a) of the Act. This was because, according to the respondent, she should have been informed of her right to appeal before the application was instituted.

[19] The applicant opposed the counter-application, filed answering papers, and the respondent submitted their replying papers. The applicant confronted the respondent about the fact that she had pleaded guilty to two of the transgressions.

[20] The respondent's response is of some concern to the extent it suggests that her decision to plead guilty to the two transgressions was not made voluntarily. She stated, in her replying affidavit that:

‘... as a result of me not having been able to exercise my right to legal representation and having been on anti-depressants at the time, I gave in to the Disciplinary Committee's pressure and I pleaded guilty and I only realised later when I was fully recovered that I had actually made a huge mistake to succumbing to pressure.’

[21] Even more concerning is what the respondent stated in paragraph 7 of her replying affidavit, that ‘I deny that I misappropriated his funds to the value of R223 739.25. I stand by my explanation in the previous affidavit.’

[22] The respondent's replying affidavit to the counter-application was sworn on 13 February 2025. As of that date, the respondent did not consider herself to have committed any wrongdoing, despite her guilty plea and the findings by the applicant's disciplinary committee.

[23] The respondent went to the extent of accusing the applicant of being ‘alive to the fact that the Disciplinary Committee chose to cut corners in the disciplinary process by failing to afford me an opportunity to be legally represented.’ She described the applicant’s decision to approach this Court as being ‘under the notion that the charges were serious in circumstances where my guilt was obtained in an unfair process by the committee cutting corners and taking advantage of my sickness and pregnancy.’

[24] A practice note filed by the respondent’s counsel dated 5 August 2025, advised that the respondent would no longer pursue the counter-application in light of a decision by this Court in *South African Legal Practice Council v Swartz* (15857/2023) [2025] ZAWCHC 60 (February 21, 2025), where it was held that the applicant is not bound by a decision of its disciplinary committee regarding the sanction and can apply to have a practitioner’s name struck off the roll.

[25] The practice note further advised that the respondent, while opposing the application, seeks an order directing that the recommendations of the disciplinary committee, as outlined in paragraph [15] above, be implemented.

[26] Both parties approached the matter based on the three-stage inquiry, which involves determining; (a) whether the alleged conduct has been proven, (b) whether the individual is fit and proper considering the proven misconduct, and (c) whether

the person should be suspended from practice for a fixed period or removed from the roll.¹

[27] Despite what is stated in the practice note filed on behalf of the respondent, her counsel acknowledged that implementing the recommendations of the applicant's disciplinary committee would not be an appropriate sanction. He proposed a sanction where the respondent would be suspended for a fixed period to be determined by the Court. For its part, the applicant persisted with an order as prayed for in the notice of motion.

[28] The question, therefore, is whether the respondent should face a fixed suspension or have her name removed from the roll of legal practitioners.

[29] In arguing for a fixed period of suspension, it was stated that the respondent was quite a junior practitioner when she committed the transgressions, that she has not been involved in any transgressions since then, that she pleaded guilty to some of the transgressions, and that she is a breadwinner.

[30] It was argued on behalf of the applicant that the transgressions in question raise concerns about her fitness to remain on the roll of legal practitioners. This is because misappropriation involves dishonesty, and so does her misrepresentation

¹ *Hewetson v Law Society of the Free State* 2020 (5) SA 86 (SCA) at para 4-5.

both to the applicant and Mr Gewalt that she had paid the R160 000 when she knew that she had not done so.

[31] The respondent's transgressions, it was argued, were worsened by her conduct after Mr. Gewalt filed a complaint with the applicant. She made commitments she failed to fulfil, and she went so far as to prevent Mr. Gewalt from testifying, even drawing up an affidavit for him to sign confirming payment.

[32] Although it was no longer contentious during the hearing, it is necessary to address the conduct that led to these proceedings. The respondent is an advocate who practices without a trust account. Because of this, she could not have believed she could accept funds directly from the public. Furthermore, as an advocate, the respondent must have known that she could not assist Mr. Gewalt with the registration of the property transfer he was in the process of purchasing. These two factors lead one to wonder what the true intention of the respondent might have been when she received the money from Mr. Gewalt.

[33] Having received the money under circumstances where she knew she couldn't assist with the property transfer, the respondent used the money for her own benefit. As a legal practitioner who stole money paid to her, one of the respondent's inexcusable explanations is that this is a personal matter between two friends. As if that was not bad enough to attribute some malice to the applicant for having referred her conduct to this Court's scrutiny is worrisome.

[34] The respondent should be aware that she is an officer of this Court, and that it is within the applicant's authority to refer conduct it deems serious enough for the Court's attention. The referral of a legal practitioner's conduct to the Court is by no means prejudging the outcome of such referral. To the contrary, the applicant is obliged to do so in pursuit of the objects of the Act set out above.

[35] As it was submitted on behalf of the applicant, the applicant's transgressions were worsened by how she conducted herself during the investigation, and I might add, during the course of this application. First, she misled the investigating committee when she stated that she had repaid the money. She did not stop there; she also presented Mr. Gewalt with fake proof of payment.

[36] Having pleaded guilty to some of the transgressions, the respondent has no trouble stating under oath that the applicant's disciplinary committee bullied her into proceeding without legal representation, which led to her pleading guilty. This, in my opinion, reveals a troubling character flaw in the respondent.

[37] A legal practitioner who accepts money she is not authorized to accept, misappropriates it, and misleads the body responsible for her statutory discipline is, in my view, not fit and proper to practice as a legal professional. The respondent's conduct clearly conflicts with the standards expected of legal professionals. Therefore, the concession that the only issue for this court to determine is whether to suspend or strike was made correctly.

[38] In arguing for suspension, the respondent's counsel referred this Court to *Peter*², *Roux*³, *Parker*⁴, and *C*⁵ all of which resulted in the suspension of the concerned practitioners for a fixed period. In *Peter*, the transgression concerned was described as having been due to a “*moral lapse*” that the practitioner succumbed to it. This, however, cannot be said of the respondent. The practitioner concerned in *Peter* could lawfully accept money from the public but not the respondent. Any moral lapse that could only have occurred at the time when the money was in the custody of the practitioner. In the case of the respondent, she cannot claim to have received Mr Gewalt's money due to moral lapse.

[39] In *Roux*, the court was concerned with a practitioner who had been an untruthful witness and whom the court found unnecessary to strike because he had been dishonest for the sake of his client. It is unclear how this is relevant to the respondent, as the respondent in this case has been dishonest both to the client and to the body that exercises disciplinary jurisdiction over her. Instead of serving as a mitigating factor, I believe it is an aggravating one. This was a moment when the respondent had an opportunity to own up, but it was not to be.

[40] *Parker* was concerned about misappropriation by a practitioner in circumstances where there was no real risk of loss to clients, and the same cannot be

² *Law Society of the Cape of Good Hope v Peter* 2009 (2) SA 18 (SCA).

³ *Incorporated Law Society Natal v Roux* 1972 (3) SA 146 (N).

⁴ *Cape Law Society v Parker* 2000 (1) SA 582 (C).

⁵ *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A).

said about the respondent's misappropriation. The complaint by Mr. Gewalt makes it clear that he had given the respondent some time to pay him the money and that he reported her to the applicant because he was worried that he might not get his money back.

[41] In *C*, the court imposed a suspended suspension, and as stated above, this has been acknowledged by the respondent's counsel as inappropriate under the circumstances. The respondent's behaviour is serious; her conduct following the filing of the complaint shows that her primary concern was avoiding the consequences of her misconduct rather than addressing the issue. Taking all of these into account, I am of the view that the appropriate sanction is to strike the respondent's name from the roll of practitioners.

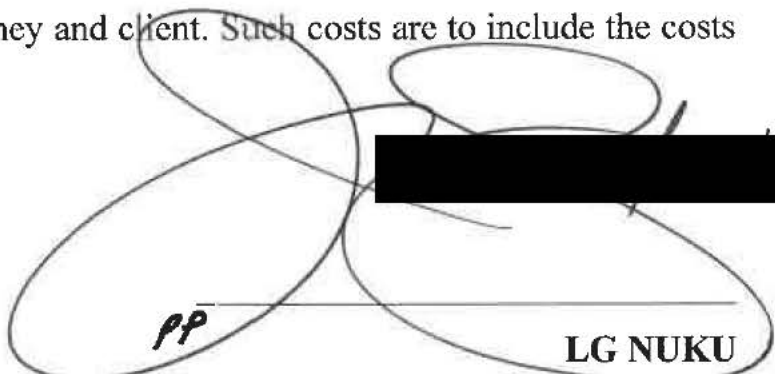
[42] The applicant brought this application as a custodian of the legal profession. It was met with a vexatious review that was abandoned in the last minute. Such conduct is deserving of censure, and as such costs on an attorney and client scale shall be ordered.

Order:

[43] As a result, the following order is made:

- a) The name of the respondent is struck off the roll of legal practitioners;

- b) The respondent is directed to surrender and deliver to the Director of the Western Cape office of the South African Legal Practice Council (“the Director”) in Cape Town her certificate of enrolment as an advocate;
- c) If the respondent fails to comply with the provisions of paragraph b) above within 1(one) week from service of this Order, the Sheriff for the District in which such certificate may be, is empowered and directed to take possession of and deliver the same to the Director of the Western Cape office of the South African Legal Practice Council; and
- d) The respondent is order to pay the costs of, and incidental to, this application on a scale as between attorney and client. Such costs are to include the costs of the counter-application.


[REDACTED]
PP LG NUKU
JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

[REDACTED]
MJ DOLAMO
JUDGE OF THE HIGH COURT

Appearances

For applicant: N Moodley
Instructed by: Colyn and Associates, Platteklouf
C/O: Von Lieres, Cooper & Barlow, Cape Town

For respondent: A Titus
Instructed by: Elroy Adams & Associates, Sarepta