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

Case number: 50378/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 06/10/2025

SIGNATURE:

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL **Applicant**

And

MOLATELO JOYCE MAHAPA **Respondent**

This matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caseline. The date for hand-down is deemed to be the 06 October 2025.

JUDGEMENT

LEDWABA AJ

Introduction

[1] The respondent was admitted as an attorney on the 22nd August 2000. She practiced for her own account under the name and style of Mahapa Attorneys.

[2] The applicant's case is that around the 15th November 2018, Black Property Investors deposited into the respondent's trust account an amount of R466 000.00 for the purchase of property described as Erf 6[...] Garankuwa, unit 1 Township (the property). The respondent's instruction was to pay to the seller, Ms Denise Rakgobalela, the purchase price and use the balance for transfer and registration costs.

[3] It is common cause that there was no transfer of the property and that the seller did not receive the purchase price. The respondent did not refund the deposited money to Black Property Investors.

[4] On the receipt of the complaint from Black Property Investors and around the 7th November 2019 the respondent was invited to respond to the complaint by no later than the 9th December 2019, failing which the matter would be referred to an Investigation Committee. On behalf of the respondent and by way of the letter dated the 9th and delivered at the applicant's office on the 11th December 2019, Mr Mathipa undertook that the respondent would respond before the 30th January 2020. The applicant granted the extension to the 30th January 2020 but the respondent failed to respond as arranged.

[5] Attempts by Ms Vilakazi, applicant's senior secretary, to arrange a meeting to inspect the respondent's books were unsuccessful. Ms Vilakazi visited the respondent's offices on the 22nd September 2020 and found that the respondent was not at her office. Zwakele advised Ms Vilakazi that the respondent was at the office in the morning and advised that the respondent's office had no telephone and that the respondent could only be contacted on her cellphone.

[6] On the 16th November 2020, 20th November 2020 and 14th December 2020 Ms Ponnusamy from the applicant's office made unscheduled visit to the

respondent's office to inspect the respondent's accounting records. The respondent's offices were locked.

[7] Several emails, telephone communications and the visits to the respondent's office did not yield the expected results of scheduling the meeting with the respondent.

[8] The respondent's failure to respond to the applicant's communication request for meeting constitute misconduct as envisaged in Rule 16.1 of the Rules made in terms of section 95(1), 95(3) and 109(2) of the Legal Practice Act 28 of 2014 (the Act). The Rules made in terms of section 95(1), 95(3) and 109(2) of the Act are referred to as the Rules.

[9] The applicant's investigations revealed that the respondent's trust account bank statement reflected that on or about the 15 November 2018 an amount of R466 000.00 was deposited into the account. The account further reflected that there was no payment to the property seller or refund to Black Property Investors and that as at the 31st December 2020, the respondent's bank trust account had a credit balance of only R9. 63.

[10] The applicant contends that as at the 31st December 2020, an amount of R465 990.37 due to Black Property Investors was not available in the respondent's bank trust account. It contends that the respondent contravened the provisions of Rules 54.14.8 and 54.14.9 of the Rules. This is because the respondent's trust banking account reflected the deficit credit balance of less than the total amount of the credit balances of the trust creditors. The Black Property Investors trust account is in debit.

[11] The respondent failed to report this shortage is required by Rules 54.14.10 and 11 of the Rules.

[12] The respondent's trust books position could not be established as the respondent's accounting books were not available. These books would not reflect the money that is not available in the respondent's trust account.

[13] The respondent does not deny receiving money from the Black Property Investors but is unable to account for it.

[14] Trust shortage points to the misappropriation of trust funds which is serious misconduct warranting the respondent being struck from the roll of legal practitioners.

[15] Another complaint was received from Adv J Prinsloo on the 30th November 2021. He complained that he was briefed by the respondent on the 28th August 2019 to attend the urgent court but was not paid for the services he rendered. The applicant says the respondent failed to respond to several communications from Adv J Prinsloo and the invitation from the applicant to respond to the complaint. Having failed to attend the scheduled meeting of the Investigation Committee, the committee recommended that the respondent's misconduct of failing to reply to communications and failure to pay for professional services rendered at her request be investigated by a disciplinary committee.¹

[16] The respondent denies having met and briefed Adv J Prinsloo. In her supplementary affidavit, the respondent contends that Adv J Prinsloo spoke directly to client Ms Dimakatso Mpane and when the counsel submitted to her the statement of account, Ms Dimakatso Mpane advised the respondent to forward it to her then attorneys JJR Inc. Paragraph 7 of the respondent's heads of arguments contends that Adv J Prinsloo appeared in court without a brief.

[17] The applicant asserts that the respondent has not been issued with Fidelity Certificates for the years commencing January 2019, January 2020 and January 2021 as required by section 84(1) Act.² The applicant submits that the contravention of section 84(1) read with 93(8) of the Act constitute not only professional misconduct, but also criminal offence which on conviction may lead to being struck off the roll of legal practitioners.

¹ In terms of section 37(3) (a) of the Act the Investigation Committee is empowered to refer any matter to the Council for adjudication by a disciplinary committee.

² Paragraph 6.3 founding affidavit- Caslines 001-36

[18] The respondent denies that she did not have the 2019 and 2020 Fidelity Certificates. As annexure MJM 4 to her answering affidavit, she attached the 2020 Fidelity Certificate. She says the 2019 certificate is in Limpopo and she is still waiting to hear from the applicant why she was not issued with the 2021 certificate, despite the fact that she is allegedly up to date with all governance compliance requirement.³

[19] Absent the 2021 Fidelity Certificate means that in terms of section 84(2) of the Act, the respondent should not be holding Black Property Investors trust money.

[20] The respondent says that she has not been well since 2018 to be at work. She called the applicant's office and spoke to Mrs J Herholdt who told her that the matter was referred to the disciplinary committee.

[21] The applicant took the position that the respondent had contravened the provisions of the Act, the Code of Conduct for legal practitioners as well as several provisions of the Rules.

[22] At the centre of the charge is that the respondent is not in possession of the 2021 Fidelity Certificate and has misappropriated trust funds in contravention of the Rules made in terms of the Act.

[23] By way of the two-part application dated the 6th October 2021 and in terms of the Act, the applicant prayed for the striking off of the roll of the respondent from the roll of practicing legal practitioners, alternatively that the respondent be suspended from practice for such period and on such conditions as the court the court may deem fit.

[24] The applicant contends that the application is of a *sui generis* nature, wherein the applicant, as the *custos morum*, places information before court for the court to exercise its discretionary powers in relations to officers of the court.

³ Paragraph 6.16 answering affidavit- caselines 002-10

[25] The respondent delivered notice of intention to oppose dated the 9th November 2021.

[26] She disputed urgency and that interdict requirements were not met.

[27] She conceded that the Black Property Investors deposited into her trust account an amount of R466 000.00. She stated that part of the money was used to obtain Municipality clearance certificate and that the documents were lodged and rejected by the Deeds Office. This resulted in the delay in the finalisation of the transfer process.

[28] She states that her tight schedule between Limpopo and North West provinces did not enable her an opportunity to consult with client on the risk of making purchase price payment before the finalisation of the transfer process.

[29] The respondent contends that internal processes to give her the right to be heard were not complied with. She contends that there was no disciplinary hearing for the complaint to be ventilated and for her to give her side. She contends that there was unfair discrimination and treatment towards the respondent.

[30] She states that the applicant used her old email to contact her. She did not receive those emails. She says the applicant made it difficult to arrange a mutual date for a meeting. The applicant replies that it used all the three emails used by the respondent.

[31] There is no record of the disciplinary hearing recommended by the Investigating Committee. This does not necessarily mean that the respondent was denied the right to be heard. The applicant's version is that the respondent did not co- operate with the applicant from the time when the applicant attempted to set up the meeting with the respondent.⁴

⁴ The applicant referred to sections 40(3)(a)(iv) and 44(1) of the Act. This give this court the power to adjudicate upon and make appropriate orders in respect of matters concerning the conduct of a legal practitioner.

[32] Part A application, initially set down for the 18th October 2021, was finalised on the 16th February 2022 when on urgent basis, the respondent was suspended from practice pending the finalisation of Part B to have the respondent's name struck from the roll of legal practitioners. Leave to appeal was denied on the 24th December 2023. The leave to appeal application court found not only that the condonation application had to fail, but also that the court was not persuaded that there were reasonable prospects that another court could come to a different conclusion in respect of the order suspending the respondent.⁵

[33] The leave to appeal judgment states that before the judgment of the 16th February 2022, the main matter was postponed three times. The matter was removed from the roll of the **26th October 2021** to allow for proper service of the application. The matter was adjourned to allow the respondent to supplement the answering affidavit. It was also adjourned because the respondent was bedridden after being exposed to Covid- 9. It says despite being so directed by court order, the respondent had failed to file her supplementary affidavit.

[34] The letter from the Deputy President dated the 4th March 2024 directed that Part B be set down for hearing on the 28th May 2024. It further directed that the respondent deliver her supplementary affidavit by the 13th March 2024 with the applicant directed to deliver the supplementary replying affidavit within ten days thereafter. The heads of arguments were directed to be delivered by the applicant and the respondent respectfully by the 10th and 24th April 2024. The joint practice minutes and the joint chronology to delivered no later than he 3rd May 2024.

[35] The respondent's supplementary affidavit and its condonation application were served under filing cover dated the 28th May 2024. Condonation application supporting affidavit states that the supplementary affidavit was delivered fifty- nine days late. The respondent states the reason for the delay to be that she had lost contact with Mr Matjie Mathipa (former candidate attorney) and Mrs Dimakatso Mpane (respondent's client) who were not available in time to provide the respondent with their confirmatory affidavits.

⁵ Caslines 014-7

[36] Condonation applicant is required to furnish full and reasonable explanation for the non-compliance with court's Rules. This includes a reasonable explanation for the period of the delay. An unsatisfactory and unacceptable explanation for any of the periods of delay will normally exclude the grant of condonation, no matter what prospects of success on the merits.⁶

[37] There is no point in granting condonation if there are no prospects of success.⁷

[38] Without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.⁸

[39] The standard for considering condonation application is the interest of justice.⁹

[40] There are no prospects of success on the merits in this case. The condonation application fails.

[41] On the 30th May 2024, the Full Bench postponed Part B sine die with the order that the supplementary affidavit be uploaded to caselines within five days, with the replying affidavit to be uploaded within ten days of the court order. The applicant was ordered to deliver the heads of argument by the 20th June 2024 and the respondent's heads to be filed by the 4th July 2024.

[42] On the 14th July 2024, the Full Bench ordered that the respondent was afforded a final postponement to secure a legal representative. The applicant was

⁶ Makhubela v S, Majake v S (2017) ZACC36; 2017(2) SACR665(CC); 2017(12) BCLR1510- par 21; National Union of Mineworkers of South Africa & Another v Hliiside Aluminium (2005) ZALC 25 ; (2005) 6 BLLR 602(LC) - par 6

⁷ Melane v Santam Insurance Co Ltd 1962(4) SA S32(A) at 532C-F.

⁸ National Union of Mineworkers v Council for Mineral Technology (1998) ZALAC 22; (1999) 3 BLLR 209(LAC) at page 211 paragraph G-H

⁹ Ferris v First Rand Bank Ltd [2013] ZACC 46, 2014(3) BCLR 321(CC), 2014(3) SA 39(CC) at paragraphs 10-12, Van Wyk v Unitas Hospital & Another (2007) ZACC 24; 2008(2) SA 472(CC); 2008(4)BCLR 442(CC) -par 20

permitted to approach the Registrar for a preferential date.¹⁰ There were other postponements orders made at the respondent's instance before that of the 14th July 2024.¹¹

[43] On the 19th August 2025 the respondent appeared in person and without filing written postponement application, requested that the matter be postponed to enable her to deal with the estate to raise fees to brief counsel. During engagement from the bar, the respondent could say what else did she wish to place before court.

[44] The postponement application was struck off the roll with judgment in respect of the main application reserved.¹²

[45] The postponement application was struck off the roll because apart from the fact that the respondent had made no written postponement application with reasons, on the 14th July 2024 the Full Bench of this division ordered the final postponement to enable the respondent to secure legal representation.

[46] The court order of the 14th July 2024 is the judgment referred to in section 165(5) of the Constitution. In terms of section 165(5) of the Constitution, an order or decision binds all persons to whom it applies, whether correctly or incorrectly granted and must be obeyed unless and until properly set aside.¹³

[47] Granting the respondent postponement request would result in the court order contrary to the one ordered on the 14th July 2024.

[48] Part B prays that the the respondent's name be struck off from the roll of legal practitioners. The applicant contends that its role is not that of an ordinary adversarial litigant, but to bring evidence of the respondent's misconduct to the

¹⁰ Caselines 000-11

¹¹ The postponement from the 2nd December 2021 to the 25th January 2022 to enable the respondent to file further supplementary affidavit. On the 25th January 2022, the matter was postponed to the 15th February 2022 to enable the respondent to file supplementary affidavit and medical certificate.

¹² Caselines 000-13

¹³ District Six Committee & Others v Minister of Rural Development & Land Reform & Others (2019) ZALCC 13- par 89 Municipal Manager OR Tambo District Municipality & Another v Ndabeni (2022) ZACC 3; 2023 (4) SA 421(CC); (2022) 5 BLLR 393(CC) par 23 and 24; Department of Transport & Others v Tasima (Pty) Limited (2016) ZACC 39;2017(2) SA 622(CC); 2017 (1)BCLR 19CC) par 147-9

attention of the court, in the interest of the court, the profession and the public at large , to enable the court to exercise its disciplinary powers.¹⁴

[49] The applicant contends that the respondent's conduct constitutes such a deviation from the standard of professional conduct that she is not a fit and proper person to continue to practice as a legal practitioner. It contends that the respondent is guilty of unprofessional or dishonourable or unworthy conduct on the part of a legal practitioner in that she allegedly contravened various Rules of the Attorneys Profession, the Attorneys Act, the Act, the code of Conduct and the South African Legal Practice Council Rules.

[50] The applicant submits that the respondent's conduct reveals character defects which cannot be tolerated in a practitioner or officer of the Court and does not meet the standard of behaviour, conduct and reputation which is required of a legal practitioner and of an officer of the court.

[51] The applicant contends that this court's jurisdiction to exercise disciplinary jurisdiction over the respondent and to pronounce upon an appropriate sanction is not derived only from the provisions of section 40(3) (a)(iv) and 44(1) of the Act, but also from inherent and common law power.

[52] Section 40(3)(a)(iv) of the Act provides that a disciplinary committee may advise Council to, inter alia, apply to the High Court for an order striking a legal practitioner from the roll or suspending a legal practitioner from practising as an attorney and/or prohibiting him/her from dealing with the trust funds.

[53] Section 43 of the Act provides that, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated fund or is guilty of other serious misconduct, it must inform the Council thereof with a view to the Council instituting urgent proceedings to suspend a legal practitioner from practice and to obtain alternative relief.

¹⁴ Van Der Berg v General Council of the Bar of South Africa (2007) ZASCAA 16- par 2

[54] Section 44 of the Act provides that the provisions of the Act do not derogate in any way from the power of the Courts to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner or a juristic entity.

[55] The applicant contends that the respondent is in contravention of the Act, the Code of Conduct and the Rules. She was accused of unprofessional, dishonourable and unworthy conduct.

[56] Even accepting that there is dispute whether the respondent failed to respond to the applicant's communication and whether Adv J Prinsloo was briefed by respondent, the respondent faces serious charges relating to the handling of trust funds.

[57] The applicant contends that the respondent has contravened the provisions of Chapter 7 of the Act, which deals with the handling of trust monies.

[58] The respondent concedes that she practiced without being in possession of the Fidelity Certificate referred to in section 84(2) of the Act for the period of January to December 2022. She is unable to account for the money deposited in her trust account by Black Property Investors. Her trust bank account reflects shortage.

[59] The respondent has been on suspension from practice for the past three years since 16th February 2022.

[60] There is no basis to delay that the respondent's name be struck off from the roll of practicing legal practitioners.

[61] There is reason why the respondent should not be ordered to pay the costs.

Order

[1] The respondent's condonation application is dismissed.

[2] The respondent, Molatelo Joyce Mahapa, is hereby struck from the roll of practicing practitioners.

[3] Subject to the amendment of order number 5, the relief granted by this court on the 16th February 2022, attached hereto as MM, will remain in force.

[4] Order number 5 of the order of the 16th February 2022 is amended by removing the name of Johan van Staden to read as follows:

'5. That the Director/Acting Director and or nominee, of the Gauteng Provincial Office of the Applicant, to be appointed as *curator bonis*'

[5] The respondent is directed:

(a) To pay, in terms of section 87(2) of the Legal Practice Act 28 of 2014, the reasonable and proven costs of the inspection of her accounting records.

(b) To pay the reasonable fees and expenses of the curator.

(c) To pay the reasonable expenses proven to be related to this application

[6] The respondent is directed to pay the costs of this application on attorney and client scale.

LEDWABA LGP
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION: PRETORIA

Date of hearing: 19 August 2025
Date of judgment: 06 October 2025

I agree.

**JANSE VAN NIEUWENHUIZEN J
UDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION**

APPEARANCES:

For applicant: B Mphokane

Attorneys for the applicant: Mphokane Attorneys

For respondent: In person