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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 20286/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

30/09/25
DATE

SIGNATURE

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

ONKE MASETI

Respondent

J U D G M E N T

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caselines.

The date and time of hand-down is deemed to be 10:00 on 30 September 2025.

TEFFO, J (MBONGWE, J CONCURRING)

Introduction

[1] The applicant (“the South African Legal Practice Council”) seeks an order for the removal of the respondent’s name from the roll of legal practitioners, alternatively, for his suspension pending the finalisation of the application. The respondent opposes the application.

[2] The respondent and the applicant did not file their answering and replying affidavits timeously. Their respective condonation applications were not opposed and were granted accordingly.

[3] In terms of the Legal Practice Act¹ (“*the LPA*”) the applicant has full legal capacity to exercise jurisdiction over all legal practitioners.

[4] The respondent was admitted and enrolled as an attorney on 25 July 2012. He commenced practising as a partner under the name and style of Maseti Attorneys, at Suite 1[...], First Floor, K[...] Towers, 1[...] Commissioner Street, Johannesburg with effect from 1 August 2012. He continues to practise as such, and his name is still on the roll of the legal practitioners of this court.

Background facts

[5] The application stems from allegations of unprofessional conduct against the respondent which can be grouped under the headings, the complaints and failure to keep proper accounting records.

The complaints

¹ Section 4 of Act 28 of 2014

[6] Between the period August 2016 to February 2022 several complaints of unprofessional conduct were lodged against the respondent. They included allegations that the respondent had failed to execute the mandate given to him, to supervise and exercise proper control over his employees, to account to or report to his clients at all, properly, promptly, fully, and timeously, had delayed payments due and payable to clients and had failed to respond to correspondence and provide information to the applicant when he was in a position to do so.

[7] The complaints of Molisakeng, Tshabalala, Xaba and Mngomezulu are all identical in that the former employees of the respondent's firm, Ms Tumi Modise ("Modise ") and Ms Mirriam Motoeneng ("Motoeneng "), who were secretaries at the time, took instructions from the complainants to do conveyancing work for them. Amounts of money of R16 800,00, R347 150,67, R7 500,00 and R2 500,00 and R158 304,92 were paid into the account of Arnishs and Associates, a company where Modise was the sole director. The mandates were not executed in the said matters, and the complainants were not refunded their monies. The complaint of Setlhare also followed the same pattern save to say that it related to an estate matter and involved a certain Mr Phiwo Bango ("Bango"). The amount of R4500,00 was deposited into Bango's personal account, and the complainant was issued with a receipt which had the details of the respondent's firm.

[8] In response to only the complaints of Tshabalala and Xaba, the respondent contended that the instructions were not authorised by him and/or

his firm, and he had no knowledge of the payments made. The payments were never made into his firm's accounts.

[9] The complaints of Mafuta and Motsai are similar. Mafuta instructed the respondent to recover a debt that was due and payable to Vhaswa Cabling Network ("Vhaswa"), one of his businesses, from Pick It Up (Pty) Ltd ("Pick It Up"). The respondent obtained judgment in favour of Vhaswa for R155 362,03. Motsai instructed the respondent to claim damages for unlawful arrest against the Minister of Police. The respondent obtained judgment in his favour against the Minister for the sum of R40 000,00. In both complaints the respondent failed to report to the complainants, did not account to them and delayed the payments that were due and payable to them.

[10] In his response to the complaint of Mafuta, the respondent confirmed the instructions and alleged that after obtaining judgment, Pick It Up lodged an appeal. It later contacted him and made an offer for payment of the amount of R227 000,00 plus costs. He discussed the offer with Mafuta and Mafuta gave him instructions to accept it. In an affidavit dated 22 December 2018, Mafuta confirmed the discussion of the offer with the respondent, the acceptance thereof and agreed to the respondent's fees of the amount of R227 000,00 less 25% contingency fee.

[11] Haki Legal Clinic ("Haki") which represented Mafuta in this matter, disputed the respondent's version regarding the appeal and the offer. It averred that Mafuta did not have knowledge of the appeal and the offer. The respondent was requested to provide the details of the offer, a costs breakdown as well as the 25% fee due to him. He failed to provide same.

[12] The respondent's answer to Motsai's complaint was that he reported to him that he was awaiting payment of the claim whereafter it would be paid to him.

[13] In the complaints of Soji, Sithole and Mathabela, the respondent failed to execute the mandate given to him, to report to them and to respond to their complaints which were forwarded to him by the applicant. In Soji, the respondent was instructed to sue Dial Direct Insurance ("Dial Direct") for payment in respect of her motor vehicle. In Sithole, the respondent was instructed to assist him with a matter relating to unlawful arrest. Sithole alleged that the respondent was avoiding him and failed to take his calls. He sought the assistance of another attorney, but the respondent withheld the docket. In Mathabela, the respondent was instructed to act as an agent to assist her with the administration of a deceased estate in which Mathabela was appointed as an executrix. The respondent failed to report to her, and she was eventually removed as an executrix of the estate.

[14] Morkel (on behalf of Rodel Financial Property Services (Pty) Ltd ("Rodel") and represented by Le Roux Vivier Attorneys complained that he instructed the respondent to attend to a property sale transaction. Rodel paid amounts of R80 278,17 and R20 000,00 on 11 and 21 September 2018 respectively as bridging finance to the respondent for the benefit of the seller on condition that the respondent would pay Rodel the bridging finance and the discounting fee on registration of transfer of the property. The respondent paid an amount of R20 770,00 (which included costs), to Rodel on 18 October 2018. After the registration of the transfer of the property on 31 October 2018,

the respondent failed to pay the bridging finance. A year later, on 2 October 2019 Rodel obtained judgment against the respondent for payment of the bridging finance.

[15] In his answer to the complaint, the respondent confirmed the civil action against him and mentioned that a certain Mareletse was joined in the action. He denied the misappropriation of funds which were due and payable to Rodel on registration of the transfer of the property. He claimed that Mareletse misled him, and he was in the process of tracking him to recover the funds from him.

[16] Khosa complained that he never consulted or met the respondent. However, the respondent impersonated as his legal representative in an arbitration matter without proper instructions from him. He alleged that the respondent was in fact, recommended to *inter alia* handle communications including case management and to communicate with the Arbitration Foundation of South Africa (“AFSA”). Although he did not disclose the amount that he paid to the respondent, Khosa alleged that the respondent took money from him under the circumstances he could not explain, and he never furnished him with any report or statement of account. He requested the respondent to explain the work he had done and on whose instruction he did it. The respondent failed to respond to the complaint after it was forwarded to him. In further correspondence the respondent was called to appear before the Investigating Committee of the applicant for a discussion of the matter. He failed to appear after he wrote back to the Committee and stated that he was sick and consulting a doctor.

Failing to keep proper accounting records

[17] This infraction includes amongst others, the respondent's failure to update and balance his firm's accounting records regularly, to extract a list of trust creditors at intervals of not less than three months as required in terms of the regulations, to retain the trust accounting records of the firm at the firm's office, to ensure that withdrawals from the firm's trust banking account shall be made only to or for a trust creditor or as a transfer to the firm's banking account, provided that such transfer shall be made only in respect of money due to the firm, etc.

[18] Mr D Swart ("Swart") a chartered accountant, inspected the accounting records of the respondent's firm between March 2018 to February 2021 and compiled a report dated 30 September 2021. He mentions in the report that when he visited the respondent's offices on 22 July 2021, the respondent's firm's accounting records were not available. He was subsequently provided with the trust cash books and trust creditors' ledgers of the firm for the years ended 28 February 2019, 29 February 2020, and 28 February 2021. He did not receive any trust or business bank statements or monthly trust trial balances, any trust accounting records from 1 March 2021 onwards as requested in his email of 29 June 2021. There were no lists of client balances available, and he decided to prepare lists of trust creditors for the period 28 February 2019, 29 February 2020 and 28 February 2021 to determine the respondent's firm's trust positions as at these dates.

[19] The trust positions as at the above three dates were as follows:

	28/09/2019	29/02/2020	28/02/2021
List of trust creditors	333 683,74	131 432,26	46 373,20
List of trust bank balances	318 665,04	127 288,96	40 292,04
Trust shortage	15 018,70	4 143,30	6 081,61

[20] According to Swart all the above trust shortages were caused by the excess of bank charges against bank interest on the trust banking account.

[21] Swart further explained that these trust shortages were increased by the trust funds which, in terms of the complaints, should have been available in the respondent's firm's trust banking account, but which were not. He referred to the trust funds of Tshabalala in the amount of R347 260,67 which were deposited on 10 March 2020, the trust funds of Rodel in the amount of R100 278,71 which were deposited on 21 September 2018 and those of Mngomezulu in the amount of R158 302,12 which were deposited on 16 January 2018.

[22] The abovementioned amounts according to Swart increased the trust shortages as follows:

	28/02/2019	29/02/2020	28/02/2021
Trust shortages	15 018,70	4 143,30	6 081,16
Ms Tshabalala			347 260,67

Rodel	100 278,71	100 278,71	100 278,71
Mr Mngomezulu	158 601,53	158 304,12	158 304,12
Adjusted trust shortage	273 601,53	262 726,13	611 924,66

[23] Swart concluded that the trust accounting records of the respondent's firm were purely prepared and retained as a record but not used by the firm to control and balance the firm's trust positions or any of the trust creditors' balances. He found that the trust accounting records were incomplete and did not contain sufficient detail of the transactions to identify the entries in the trust ledger accounts of the trust creditors of the firm.

[24] In Swart's opinion, the trust shortage that relate to the trust funds of Tshabalala and Mngomezulu was caused by the lack of control by the respondent over his staff members as well as over the receipt of trust funds. The non-payment of the trust funds due to Rodel was a further indication of the respondent's lack of control over the receipt and payment of trust funds. Swart established that the trust creditor's ledger accounts which reflect the receipt of funds from Rodel indicate that the funds were removed by the firm from the firm's trust account through the payment of fees.

[25] Swart discussed the complaints of Tshabalala, Mafuta, Motsai, Morkel on behalf of Rodel, and Mngomezulu with the respondent. These discussions will be referred to later in the judgment.

The respondent's version

[26] The respondent denies the allegations against him. He contends that the application has been instituted prematurely as he was never subjected to a disciplinary hearing by the applicant.

The complaints

[27] In respect of the complaint of Setlhare, the respondent contends that Bango was never employed by his firm. Regarding the complaints of Molisakeng, Tshabalala, Xaba and Mngomezulu, he admitted that Modise was employed at his firm as a secretary between 2017 and 2019. He claimed that he never took such instructions nor received any payment from any of the complainants. He stated that he could not take such instructions as he has never been admitted as a conveyancer. He has never met any of the complainants. He asserted that he became aware of Ms Modise's fraudulent activities when the applicant wrote to him and informed him about a complaint it had received from Xaba. Immediately thereafter, he dismissed Modise from his employment. Subsequent thereto, he conducted his own investigation which led him to Alberton Police Station where he got information that Modise was at the time facing criminal charges of fraud and her case was pending in court.

[28] With regard to the complaint of Mafuta, the respondent stood by what he said in his response to the complaint that was forwarded to him by the applicant. In relation to Motsai's complaint, he confirmed the instruction by him and agreed that Motsai was paid the amount due to him less his fees. He asserted that the matter was long resolved between him and Motsai and

Motsai has never proceeded further with the complaint. He referred to an affidavit deposed to by Mr Motsai in confirmation thereof.

[29] The respondent confirmed receipt of instructions from Soji. He contended that Soji only paid an amount of R3 500,00 for consultation and opening a file. Soji undertook to make further payments for the services to be rendered. He started working on the process of drafting summons and had it issued without any further payment from Soji. He claimed that Soji approached the applicant to avoid paying his legal fees.

[30] The respondent denied the allegations made by Sithole and submitted that despite having not carried out the mandate to finality, it is not disputed that he performed some work and had rendered the statement of account to Sithole for payment which is still pending. He claimed that Sithole sought to avoid payment and decided to terminate his mandate. Sithole instructed Mashele Attorneys who have requested the file. He confirmed that he refused to hand over the file to Mashele Attorneys as security for the payment of his fees.

[31] Regarding the claim of Mathabela, the respondent contended that Mathabela was duly informed that she had been removed as an executrix and that there is a pending application to have her removal as executrix challenged.

[32] In the complaint of Morkel (on behalf of Rodel) and represented by Le Roux Vivier Attorneys, the respondent denies the allegations and contends that payment has been made to Rodel which disposes of the matter. He claims that in this matter his firm only acted as surety and the firm never

squandered any money save for the fact that payment was made in error and this was later rectified.

[33] The respondent denies the allegations against him by Khosa. He contends that Khosa had a matter against Bowman Gilfillan Attorneys, and the matter was set down for arbitration under the auspices of AFSA. He claims to have objected to the arbitration because Bowman Gilfillan Attorneys is one of the founders of AFSA and the matter was therefore postponed *sine die*.

Failing to keep proper accounting records

[34] The respondent disputed Swart's report. He denied that there were trust shortages as alleged as far as they relate to monies that were clearly never paid into his business nor trust accounts but to other people who were not acting on his behalf and/or the firm. He submitted that Swart's report clearly demonstrates that he was not responsible for the alleged trust shortages as these funds were never received by him or his firm.

The issue for determination

[35] The questions for consideration in this case entail a three-stage enquiry:

- (a) Whether the alleged offending conduct has been established on a preponderance of probabilities,
- (b) Once the court is satisfied that the offending conduct has been established, it must consider whether the practitioner concerned is a fit and proper person to continue to practise. This involves a

weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment,

(c) If the court is of the view that the practitioner concerned is not a fit and proper person to practise as an attorney, it must inquire whether in all the circumstances the practitioner in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice².

Applicable legal principles

[36] It is trite that the court's jurisdiction and power to exercise disciplinary jurisdiction over the legal practitioners and to pronounce upon an appropriate sanction is not derived solely from the provisions of sections 40(3)(a)(iv) and 44(1) of the LPA. The court has such inherent and common law power.

[37] The proceedings instituted by the applicant against members of the legal profession ("*the legal practitioners*") are of a disciplinary nature and are *sui generis*³. The Appellate Division in *Solomon v Law Society of the Cape of Good Hope*⁴, described the proceedings as follows:

"Now in these proceedings the Law Society claims nothing for itself ... It merely brings the attorney before court by virtue of a statutory right, informs the court what the attorney has done and asks the court to exercise its disciplinary powers over him ... The Law Society protects the interests of the public in its dealings with attorneys. It does not institute any action or civil proceedings against the attorney. It merely submits to the court facts which it

² *Jasat v Natal Law Society* 2000 (3) SA 44, [2000] 2 All SA 310 (SCA) at para 10

³ *Hepple and Others v Law Society of the Northern Provinces* [2014] ZASCA 75; [2014] 3 All SA 408 (SCA) para 9; *Cirota and Another v Law Society, Transvaal* [1979] 1 All SA 179 (A); 1979 (1) SA 172 (A) at 187

⁴ 1934 AD 401 at 408-409

contends constitute unprofessional conduct and then leaves the court to determine how it will deal with this officer [of the court].”

[38] Where allegations and evidence are presented against an attorney, they cannot be met with mere denials by the attorney concerned. If the allegations are made by the Law Society and the 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 explanation⁵.

[39] When the court admits an attorney to the profession, he is put in a position to conduct matters of trust with the public. He occupies a position of great confidence and power, and the court is entitled to demand a very high standard of honour from him in the profession. The law exacts from him *uberimma fides* where he acts as agent for others; that is the highest possible degree of good faith. It is, therefore, essential that the public should be able to rely implicitly on the integrity and good faith of any attorney they may wish to employ. If the court, having regard to all the circumstances brought before it, is no longer justified in regarding an attorney as a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to an attorney, it should either remove him from the roll of attorneys or suspend him from practice. For the sake of the public, and no less the profession, it is of utmost importance to enforce on all attorneys the high standard of duty

⁵ *Hepple and others v Law Society of the Northern Provinces supra* at para 9

which rests upon them and demand the great integrity which is expected of them⁶.

[40] In *General Council of the Bar of South Africa v Geach & others*⁷, the SCA had this to say in relation to legal practitioners:

“After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard-won freedoms is without parallel. As officers of our courts, lawyers play a vital role in upholding the constitution and ensuring that our system of justice is both efficient and effective. It therefore stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them. It follows that generally a practitioner who is found to be dishonest must surely in the absence of exceptional circumstances expect to have his name struck from the roll.”

[41] The court and the applicant have a duty to act where a legal practitioner’s conduct falls short of what is expected, and to curb the erosion of the values in the profession. The protection of the public goes hand in hand with the court’s obligation to protect the integrity of the courts and the legal profession. Public confidence in the legal profession and the courts is necessarily undermined when the strict requirements for membership to the profession are diluted.

Discussion

⁶ *Incorporated Law Society, Transvaal v Visse and others, Incorporated Law Society v Viljoen* 1958 (4) SA 115 (T) at 131D-G

⁷ 2013 (2) SA 52 (SCA) at para 87

[42] Before addressing the questions raised in this application, I find it prudent to consider the respondent's contention that this application is premature, it was not supposed to have been brought to court without him being called to a disciplinary hearing. In his supplementary heads of argument, a submission was made that the respondent feels that he has been denied the opportunity to have the facts set out in his supplementary answering affidavit investigated internally. It was further submitted that on 11 October 2024 when this application was postponed to allow the applicant to file a supplementary replying affidavit, the court expressed the view that the applicant may need to revisit its internal inquiry.

[43] When this issue was raised again during argument, Ms Moolman for the applicant submitted that the respondent had many opportunities to answer to the allegations made against him. He was not co-operative at all. Various correspondences were addressed to him inviting him to respond to the complaints lodged against him. However, he failed and/or neglected to respond and/or responded long after the correspondences were sent to him.

[44] Furthermore, the LPC invited him to an Investigating Committee meeting. He failed to appear on the day. It took Swart months to get the respondent to cooperate to allow him to inspect the firm's accounting records. In the replying affidavit the applicant contends that there is no obligation on it to first exhaust any procedure in terms of its own Rules prior to instituting proceedings against a legal practitioner.

[45] While we agree with Ms Moolman that referral to an internal disciplinary hearing is not a prerequisite for bringing an application of this nature to court,

the history of this matter, attest to the difficulties the applicant encountered in having the respondent to respond to the correspondence sent to him. Considering a series of correspondence addressed to him, we agree that it would not have been possible for the applicant to conduct a disciplinary hearing against the respondent. The respondent is facing serious allegations of misconduct, the application had to come to court. Having said that, it is our view that the contentions by the respondent are meritless.

Has the offending conduct been established on a preponderance of probabilities?

[46] This is a factual inquiry. All the facts should be considered in totality.

Complaints of Molisakeng, Xaba, Mngomezulu and Tshabalala

[47] These are the complaints where the former employees of the respondent, Modise and Motoeneng were involved. In the respondent's heads of argument, the following submissions were made: that the duties of Modise did not include consulting and taking instructions from clients. Modise had always known that the respondent is not an admitted conveyancer and does not take conveyancing work from clients. The applicant chose to ignore the bank deposits attached to the founding affidavit which indicate that the payments by the complainants were made to Arnishs and Associates. The applicant elected not to follow the money but the respondent even in the face of glaring evidence pointing to the contrary.

[48] In submitting that the respondent failed to supervise and exercise control over his employees and staff, Ms Moolman referred us to the case of the *Law Society of the Transvaal v Malatji*⁸, where the Court had this to say:

“... It is equally fine that attorneys may have to leave the handling of matters and taking of administrative, managerial, and professional decisions in the hands of the partners and of junior staff members. The attorney does not by so doing escape personal responsibility. The respondent cannot place the blame for the manner in which trust money was handled on his candidate attorney or his staff. The respondent’s duty towards the preservation of trust monies is a fundamental, positive and unqualified duty. In failing to personally supervise his candidate attorneys or staff in their handling of trust moneys, the respondent has breached his duty.”

[49] The respondent further explained that upon investigation, it was established that Arnishs and Associates was a private company that was registered on 14 June 2018 with Modise as its sole director.

[50] In all the above matters the respondent contends that he has never authorised Modise and Motoeneng to do any conveyancing work and/or receive money on his behalf and/or the firm. It is common cause that all the monies paid by these complainants were never deposited into the trust banking account of the firm. They were all paid into the banking account of Arnishs and Associates. The respondent further contended that the infractions

⁸ 2004 JDR 0087 (T) para 19

took place in his absence, and he could not have been expected to supervise and exercise control over the employees who were mere secretaries and not authorised to consult and take instructions on his behalf or the firm.

[51] He further mentioned that Motoeneng listed herself on LinkedIn as a legal specialist at Arnishs and Associates from September 2018 to May 2022. She together with Modise ran a scheme using the company Arnishs and Associates to defraud the public.

[52] The argument on behalf of the respondent which purports to blame his former employees for what happened, loses sight of the fact the respondent has a duty towards the preservation of trust monies which is fundamental, positive and unqualified. In our view the respondent has breached this duty. It follows that he is guilty of unprofessional conduct in that he failed and/or neglected to personally supervise his employees in their handling of trust moneys in contravention of clause 18.3 of the Code of Conduct. It is immaterial that the infractions happened in his absence and were not authorised by him.

[53] The respondent did not take the instructions from the complainants. He was not aware of these instructions and did not authorise them. We are not persuaded that he contravened clause 3.1, 3.11 and 18.4 of the Code of Conduct. The funds paid by the complainants were never deposited into the trust and business accounts of the firm. He did not benefit from these funds. He also did not contravene Rule 54.13 of the LPC Rules.

[54] In the matters of Tshabalala, Xaba, and Mngomezulu, the respondent has also been accused of failure to account faithfully, accurately and

timeously for his client's money which came into his possession, keep such money separate from his own money, and retain such money for so long as is strictly necessary in breach of clause 3.8 of the Code of Conduct. As said earlier the respondent did not consult and/or take instructions from these complainants. We are therefore not persuaded that the respondent contravened clause 3.8 of the Code of Conduct.

[55] The respondent was also accused of contravening Rule 54.12 of the LPC Rules in the matter of Mngomezulu in that he failed within a reasonable time after the performance or earlier termination of the mandate received from the complainant, to furnish the complainant with a written statement of account setting out with reasonable clarity: details of all amounts received by him in connection with the matter, appropriately explained; particulars of all disbursements and other payments made by him in connection with the matter; fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, the amount due to or owed by the client. The evidence does not prove the contravention of Rule 54.12 of the LPC Rules.

[56] The complaints of Molisakeng and Mngomezulu were sent to the respondent in various correspondences, and he simply did not respond. We are persuaded that the respondent contravened clauses 16.1, 16.2 and 16.3 of the Code of Conduct.

[57] In the matter of Setlhare, the respondent is also accused of contravening the provisions of Clauses 3.1, 3.11, 18.14, 18.3, and 16.1 to 16.3 of the Code of Conduct as well as Rule 54.13 of the LPC Rules. The

complaint was forwarded to the respondent on 10 February 2022. He denies receiving it. The correspondence shows that the complaint was sent to the same email address that has been used in the other complaints. The contention by the respondent that he did not receive this complaint, can therefore not be true. There can be no doubt that the respondent received the complaint and failed and/or neglected to respond to it in contravention of clauses 16.1 to 16.3 of the Code of Conduct.

[58] In the supplementary answering affidavit, the respondent further states that he does not know how Bango came into possession of the receipt book of his firm as he was never employed by the firm. He also states that he laid criminal charges against Bango. The applicant contends that when this matter was postponed to allow the respondent to file a supplementary answering affidavit, the court requested the respondent's Counsel to indicate in the respondent's papers where he explained his relationship with Bango or where he indicated that he does not know him. Even in the supplementary answering affidavit the respondent did not address the issue. He does not deny that he knows Bango.

[59] Taking into account that it is common cause that Setlhare met Bango in the mall and also deposited the money into Bango's personal account, it is evident that the respondent and or the firm have never benefited from these funds. The receipt issued to Setlhare although it has the details of the respondent's firm, does not indicate whether the money was paid in the trust or business account of the firm. In my view the applicant's argument is neither here nor there as it does not take this matter any further. There is

therefore no evidence to prove that the respondent contravened clauses 3.1, 3.11, 18.14 of the Code of Conduct. There is also no evidence that Bango was employed by the respondent's firm. We are not convinced that the respondent breached clause 18.3 of the Code of Conduct.

Mafuta, Soji, Le Roux Vivier Attorneys, Sithole, Khosa, Mathabela and Motsai

[60] Regarding the complaint by Mafuta, it appears that the respondent did not update him of the progress in the matter. The reason for the complaint was that the respondent did not account to him and pay over the money that he instructed him to claim against Pick It Up. Mafuta was not aware of the appeal against the judgment that was granted in his favour. Even though the respondent confirmed to Swart that Mafuta was paid his money during 2018, the respondent has not supplied the information that was requested by the applicant and Swart. This is despite the fact that the respondent had indicated that he had requested Pick It Up to furnish him with a remittance order which he intended to include it in his response. The respondent did not come clean in this matter. In his heads of argument, it was submitted that the particulars of claim clearly gave a breakdown of how the amount of R155 362,30 claimed, was arrived at and that he had properly accounted to Mafuta. It is the respondent who indicated that after judgment was granted in favour of Mafuta and/or his business, Vhaswa, he received an offer from Pick It Up in the amount of R227 000,00. Swart reported that in the judgment, Pick It Up was also ordered to pay legal costs. Swart was unable to identify receipt of such legal costs in the trust cash book of the firm.

[61] The respondent is a senior legal practitioner. He is expected to provide the LPC with sufficient information and reply fully and accurately to the complaint lodged against him. The information that he has provided is not supported by any evidence. He should have attached a copy of the judgment, proof of the notice of appeal together with the offer he received, and the acceptance of the offer. The Court is in the dark as to what happened, when was the judgment granted, when was the offer made and accepted, and when was the payment received. There is also no proof of payment to the complainant and the date it was made. The fact that Mafuta's affidavit confirms that he accepted the payment, does not resolve the issues at hand. It is evident that the respondent did not account to Mafuta, did not handle this matter properly, and delayed payment of his money which was due and payable to him. In our view the respondent failed to maintain the highest standard of honesty and integrity. He therefore contravened clauses 3.1, 3.8, and 16.2 to 16.3 of the Code of Conduct together with Rules 54.12 and 54.13 of the LPC Rules.

[62] In respect of Soji's complaint, the respondent was given instructions during April 2019. However, he only issued summons on 8 September 2020. The applicant received this complaint on 15 May 2020. There are no details as to how much Soji paid the respondent although the respondent states in his answering affidavit that she only paid an amount of R3 500,00 which was for opening the file and consultation. He also mentions that Soji promised to make further payments which she did not effect. He executed the mandate notwithstanding the non-payment.

[63] The respondent does not explain why he only issued summons more than a year after he received instructions from Soji and he does not attach proof of a statement of account indicating the amount of work he had done, and the fees Soji was supposed to pay him.

[64] The respondent failed to respond to the complaint after 5 (five) letters were addressed to him by the applicant. The answering affidavit was deposed to on 19 June 2022, almost 2 (two) years after the complaint was sent to him. He does not explain what happened after Dial Direct Insurance had filed the notice of intention to defend the matter. It is evident that this matter was not properly handled. We agree that the respondent contravened clauses 3.1, 3.11, 18.14 and 16.1 to 16.3 of the Code of Conduct.

[65] Regarding the complaint lodged by Le Roux Vivier Attorneys on behalf of Morkel (Rodel), the fact that the respondent has now paid the money he owed to Rodel and that the matter has been resolved between the parties, does not take away the fact that the money that was held in trust on behalf of a client, Rodel, for a specific purpose was not available upon the transfer of the property to fulfil that purpose. Rodel paid the funds in the trust account of the firm as bridging finance and in paragraph 7 of the undertaking by the respondent dated 2 September 2018, the respondent's firm undertook to pay Rodel money from the proceeds of the transfer within 72 hours of the registration of the transfer/receipt of funds.

[66] Summons was issued against the respondent's firm because it could not pay the funds as agreed. According to Swart the amounts of R80 278,17 and R20 000,00 received from Rodel on 11 and 21 September 2018

respectively, were paid into the trust banking account of the firm. On 18 October 2018, an amount of R20 770,00 (inclusive of interest) was paid to Rodel from the firm's business banking account. The respondent's firm's trust creditor's ledger accounts which reflected receipt of the two amounts from Rodel, indicated that the trust funds in these accounts were removed from the firm's trust account through the payment of fees. No payments were made to the seller and to Rodel. The seller of the property did not receive bridging finance as alleged by the respondent's firm. The seller did not owe Rodel or the respondent's firm any funds. We agree with Swart that there was therefore a trust shortage in respect of the trust money received from Rodel in the total amount of R100 278,71 from the period 28 February 2019 to 28 February 2021.

[67] It is very concerning that the version of the respondent in respect of this matter was that the seller (Mr Moreletse) borrowed the money received from Rodel and that the seller misled the respondent by not telling him that he borrowed that money whereas in fact it was the respondent who borrowed the money. As per Swart's report the funds were not even borrowed on behalf of the seller. These funds were immediately transferred to the respondent's firm's business account. In the answering affidavit the respondent stated that his firm merely acted as a surety and the payment that was not available to Rodel which was later rectified, was made in error.

[68] It appears that after judgment was obtained against the respondent's firm on 2 October 2019 for the sum of R101 698,05, the respondent negotiated the terms of the repayment of the debt with Rodel and he signed

an acknowledgement of debt on 20 July 2021 in terms of which the firm agreed to pay the settlement amount of R200 000,00 in six monthly instalments of R33 333,33 from 31 July 2021 to 31 December 2021. Swart reported that as at the date of his report on 30 September 2021, no instalments were paid and the full amount of R200 000,00 was still due and payable to Rodel.

[69] Without explaining how the full amount due and payable to Rodel had been paid and not even attaching any form of proof of payment, the respondent just attached an email from Rodel's attorneys stating that the matter has been settled between the parties and that the amount due and payable has been paid in full.

[70] Three letters were addressed to the respondent relating to this complaint, with the last letter sent on 23 June 2020. He only responded on 12 October 2020.

[71] We are satisfied that the respondent has contravened clauses 3.1, 3.8, 16.1 to 16.3 of the Code of Conduct and Rule 54.13 of the LPC Rules.

[72] The response of the respondent in the answering affidavit to the complaint of Sithole is extremely deficient. He is being accused of failing to execute an instruction given to him by a client and that he has been avoiding to take his calls. However, without explaining and attaching any proof of what he had done as alleged, he makes bald allegations that although he did not carry out the mandate to finality, there is no dispute that he performed some work. He further says he rendered an account to Sithole and payment is still pending. It appears that Sithole terminated his mandate because he was

unhappy with his performance. He arrogantly mentions that he refused to hand over the file to Mashele Attorneys as security for the payment of his fees. The attitude displayed here, and the response thereof, do not accord with the conduct that is expected of an attorney.

[73] Five letters were addressed to the respondent relating to the complaint of Sithole. The respondent failed and/or neglected to answer any of the letters. He has not been cooperative with the applicant.

[74] In our view, the respondent's conduct is, *inter alia*, in contravention of the following provisions of the Legal Practice Act, the Code of Conduct and the LPC Rules: clauses 3.1, 3.11, 18.14, 16.1 to 16.3 of the Code of Conduct.

[75] The applicant in the matter of Khosa, has accused the respondent with serious allegations which are very concerning that he fraudulently masqueraded as his firm's representative in an arbitration matter without proper instructions from him. He also took money from him under circumstances he could not explain and has never furnished him with any report or statement of account. Although the details of how much money was paid to the respondent are not there, the respondent did not come clean in this matter. Numerous correspondences were sent to him by the applicant including the correspondences that called him to a meeting with the Investigation Committee. The respondent elected not to answer to the letters sent to him and only on the day of the meeting, he sent an email stating that he was sick. He did not cooperate with the applicant. In his answering affidavit he does not give a proper answer to the complaint. He does not explain how he got the instruction to represent Sithole in the arbitration. He just denies the

allegations. The respondent must state full facts to counter the allegations against him. He failed to do so. We are persuaded that he contravened the provisions of the LPA, the Code of Conduct and the LPC Rules.

[76] The respondent did not respond to the correspondence addressed to him relating to the complaint of Mathabela. In the answering affidavit he barely denies the allegations without attaching any proof of the statements he made. As an agent who has been instructed to assist the executrix in an estate, the respondent is supposed to have kept Ms Mathabela informed about what was happening in the estate. He does not submit the progress report that he gave her. There is nothing to support the allegations he made. Ms Mathabela is armed with a letter from the Master which states that she had been removed as an executrix. She did not hear it from the respondent but the Master. This is a clear indication that the respondent has failed to execute his mandate.

[77] Also in this matter the respondent has not been cooperating with the applicant. More than three letters were sent to the respondent which related to this complaint. The respondent failed/neglected to answer even when he was notified that the Investigating Committee of the applicant had recommended that he be charged. We are persuaded that the respondent's conduct is in contravention of the provisions of the LPA, the Code of Conduct and the Rules in particular clauses 3.1, 3.11, 18.14, and 16.1 to 16.3.

[78] In the complaint of Motsai, the court notes that the matter has been resolved between the respondent and Motsai. Be that as it may, the respondent still did not furnish the applicant with the information it requested. The respondent's reply to this complaint is as good as no response at all.

Whilst there is proof that judgment in this matter was granted on 26 January 2015, there are no details as to when payment was made and what kind of the fee arrangement was in place. Swart reported that it appears that the respondent's firm only acknowledged payment to Motsai on 2 December 2017 which is a period of almost three years after judgment was obtained in Motsai's favour. Whereas Motsai stated that there was a contingency fee agreement in place, when the respondent was requested to furnish a copy, he indicated that the Motsai had not signed any contingency agreement.

[79] There are no details as to how the matter was resolved. There is no reason why the respondent failed and/or neglected to provide the information requested by the applicant. It is not known how the amount that was paid to Motsai was calculated. The respondent has failed to account to Motsai, delayed payment to him and elected not to provide the applicant with the information it requested making himself guilty of unprofessional or dishonourable conduct in contravention of clauses 3.1, 3.8 and 16.1 to 16.3 of the Code of Conduct as well as Rules 54.12 and 54.13 of the LPC Rules.

Is the respondent a fit and proper person to continue to practice?

[80] This enquiry entails a value judgment which involves the weighing up of the conduct complained of against the conduct expected of an attorney.

[81] In *Kekana*⁹, Hefer JA stated that absolute integrity and scrupulous honesty are demanded from legal practitioners and that those who have demonstrated a lack of those qualities cannot be expected to play their part.

⁹ *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA), [1998] 3 All SA 577 (A) at 656A-B

In this matter *in casu*, the conduct of the respondent demonstrates a lack of these necessary qualities. The respondent has not cooperated with the applicant to allow it to conduct proper investigation of the complaints against him. The applicant wrote him several letters which he elected not to answer when he was in a position to do so. In some complaints he did not respond within a reasonable time to allow the applicant to further investigate the matters. In the complaints of Motsai and Mafuta, the applicant requested the respondent detailed information as to how he had calculated the amounts paid to the complainants, whether there was a fee structure in place, proof of the payment of the trust money to the firm, etc. The respondent just responded by saying the matters have been resolved between the parties.

[82] Furthermore, the respondent repeatedly contended that he was not admitted as a conveyancer and has never taken instructions to do such work when he was confronted with the complaints where his former employees defrauded members of the public. It was established in the complaint of Morkel on behalf of Rodel that he took instructions to transfer immovable property and money was paid into the respondent's firm as bridging finance. He also signed an undertaking to transfer immovable property. Furthermore, he lied under oath when he stated that his firm only acted as surety when in fact that was not the case. Moreover, his version regarding the amount of money that was paid in trust by Rodel, leaves much to be desired.

[83] In most of the complaints as discussed above, the responses are very sketchy. He had many opportunities to come forth with information, but he failed to do so. He still has not disclosed where he took instructions from

Khosa whom he represented in an arbitration and how the payment by Khosa was made. He has not been honest and has not displayed absolute integrity expected of him as an attorney. We are therefore not persuaded that the respondent can be considered as a fit and proper person to be allowed to continue to practise as a member of the legal profession.

The appropriate sanction

[84] In determining the appropriate sanction, the court is not imposing a penalty. The main consideration is the protection of the public¹⁰.

[85] It is never easy to impose the ultimate sanction on an attorney as it has the effect of terminating his means of livelihood, with adverse consequences to himself, and his family. Before imposing such a sanction, a court must be satisfied that the lesser stricture of suspension from practice will not achieve the court's supervisory powers over the conduct of an attorney. These objectives have been described as twofold: first, to discipline and punish the errand attorney and, second, to protect the public, particularly where trust funds are involved¹¹.

[86] An attorney's duty in regard to the preservation of trust money is a fundamental, positive and an unqualified duty. Neither negligence nor wilfulness is an element of a breach of such duty. Where trust money is paid to an attorney, it is his/her duty to keep it in his/her possession and use it for no other purpose than that of trust. It is inherent in such a trust that the attorney should at all times have available liquid funds in an equivalent

¹⁰ *Malan & Another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) par 7

¹¹ *Summerley v Law Society, Northern Provinces* 2006 (5) SA 613 (SCA) at para 19

amount. The very essence of a trust is the absence of risk. It is imperative that trust money in the possession of an attorney should be available to his/her client the instant it becomes payable. Trust money is generally payable before and not after demand¹².

[87] Mr Ndlovu for the respondent argued that the respondent should not be punished for the trust shortage of the funds which his former employees pocketed when they defrauded the complainants. The evidence is clear that the amounts paid by Tshabalala and Mngomezulu were not paid in the respondent's firm's banking accounts, and he did not authorise the payments thereof. Those payments were paid in the account of Arnishs and Associates the company of Modise. We cannot therefore hold the respondent responsible for the trust shortage that involve such funds. However, the evidence proves that there was a trust shortage which relate to the amount of R100 271,71 which was paid by Rodel as bridging finance. This amount which was supposed to be paid to Rodel upon registration of transfer of the immovable property was not available for that purpose at the time. This led to the institution of an action against the respondent's firm for recovery of same and judgment was eventually obtained against the respondent's firm.

[88] Although it appears that the complaint of Rodel has been resolved in that the respondent had finally paid the amount that was due and payable to Rodel, this does not take away the fact that as at the time of Mr Swart's report, the trust shortage was still there and Rodel was not paid any cent in terms of the acknowledgement of debt signed by the respondent.

¹² See: *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (T) at 394

[89] In *Malan*¹³, it was held that if the Court finds dishonesty in the conduct of a legal practitioner, the circumstances must be exceptional before a Court will order a suspension instead of a removal.

[90] The conduct of the respondent in the above matters and the extent to which it reflects on his character, clearly indicates that he is not worthy to remain in the ranks of the profession. The court has to protect the public from this kind of conduct. We cannot find any exceptional circumstances that would justify a lesser sanction. It, therefore, follows that the appropriate sanction under the circumstances is to have the name of the respondent struck off the roll of attorneys (legal practitioners).

Costs

[91] Given the nature of these proceedings and the role that the applicant fulfils as *amicus curiae*,¹⁴ the applicant is entitled to its costs on attorney and client scale.

[92] In the result the following order is made:

1. That the name of Onke Maseti (hereinafter referred to as the respondent) be removed from the roll of legal practitioners of this Court.
2. The respondent immediately surrenders and deliver to the registrar of the Honourable Court his certificate of enrolment as a legal practitioner of this Honourable Court.

¹³ *Supra* at 221D-F, see also *General Bar Council of South Africa v Geach & Others supra*

¹⁴ *Law Society of the Northern Provinces v Le Roux* 2012 (4) SA 500 GNP at 502E-F

3. That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraphs within two (2) weeks from the date of this order, the Sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the registrar of this Honourable Court.

4. That the respondent be prohibited from handling or operating on the trust accounts as detailed in paragraph 5 hereof.

5. That Ignatius Wilhelm Briel, the Director of the Gauteng Provincial Office of the applicant or any person nominated by him, be appointed as *curator bonis (curator)* to administer and control the trust accounts of the respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the respondent's practise as a legal practitioner and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 86(1) and (2) of Act No 28 of 2014 and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4) of Act No 28 of 2014, 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 accounts), with the following powers and duties:

5.1 immediately to take possession of the respondent's accounting records, records, files and documents as

referred to in paragraph 6 and subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control (hereinafter referred to as the fund) 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;

5.2 subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests 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 section 86(1) and (2) and/or section 86(3) and/or section 86(4) of Act No 28 of 2014 (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);

- 5.3 to ascertain from the respondent's accounting records the names of all persons on whose account the respondent appear 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 of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;
- 5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control, 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;
- 5.5 to admit or reject, in whole or in part, subject to the approval of the Legal practitioners' Fidelity Fund Board of Control, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;
- 5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but

subject always to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

5.7 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 utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 86(5) of Act No 28 of 2014 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by the respondent to the applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, to the respondent, if he is solvent, or, if the respondent is insolvent, to the trustee(s) of the respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged for repayment and whose claims have been approved, to

distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Legal Practitioners' Fidelity Fund;

5.9 subject to the approval of the chairman of the Legal Practitioners' Fidelity Fund Board of Control, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

5.10 to render from time to time, as curator, returns to the Legal Practitioners' Fidelity Fund Board of Control showing how the trust account(s) of the respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That the respondent immediately delivers the accounting records, records, files and documents containing particulars and information relating to:

6.1 any monies received, held or paid by the respondent for or on account of any person while practising as a legal practitioner;

- 6.2 any monies invested by the respondent in terms of section 86(3) and/or section 86(4) of Act No 28 of 2014;
- 6.3 any interest on monies so invested which was paid over or credited to the respondent;
- 6.4 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;
- 6.5 any insolvent estate administered by the respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
- 6.6 any trust administered by the respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
- 6.7 any company liquidated in terms of the provisions of the Companies Act, No 61 of 1973 read together with the provisions of the Companies Act, No 71 of 2008, administered by the respondent as or on behalf of the liquidator;
- 6.8 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

6.9 the respondent's practice as a legal practitioner of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, 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 nominee.

7. That should the respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the respondent (as the case may be), the Sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.

8. That the curator shall be entitled to:

8.1 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;

8.2 require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he

may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the respondent and/or the 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;

8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 wind-up of the respondent's practice.

9. That the respondent be and is hereby removed from office as:

9.1 executor of any estate of which the respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

9.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;

9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

- 9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973 and read together with the provisions of the Companies Act, No 71 of 2008;
- 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
- 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporations Act, No 59 of 1984; and
- 9.7 administrator appointed in terms of section 74 of the Magistrates Court Act, No 32 of 1944.

10. That the respondent be and is hereby directed:

- 10.1 to pay, in terms of section 87(2) of Act No 28 of 2014, the reasonable costs of the inspection of the accounting records of the respondent;
- 10.2 to pay the reasonable fees of the auditor engaged by applicant;
- 10.3 to pay the reasonable fees and expenses of the curator, including travelling time;
- 10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

10.6 to pay the costs of this application on an attorney-and-client scale and on scale C in terms of Rule 69(7) of the Uniform Rules of Court.

11. That if there are any trust funds available 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, shall 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 the respondent in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof.

12. That a certificate issued by a director of the Legal Practitioners' Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

**M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree:

**M MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearances

For the applicant	J Moolman
Instructed by	Damons Magardie Richardson Attorneys
For the respondent	W B Ndlovu
Instructed by	Peter Zwane Attorneys
Heard on	11 February 2025
Handed down on	30 September 2025