



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 3502/2025

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

THANDUXOLO THEOPHILUS MAFANYA

RESPONDENT

Neutral citation: *The South African Legal Practice Council v Mafanya* (3502/2025)
[2025] ZAFSHC 346 (5 November 2025)

Coram: Daffue *et* Chesiwe JJ

Heard: 11 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h00 on 5 November 2025.

Summary: Application for suspension of legal practitioner from practice pending finalisation of disciplinary hearing to be instituted and/or an application for striking off – application initially removed from the urgent court roll due to lack of urgency – applicant failed to prove requirements for interim suspension of the practitioner – application dismissed.

ORDER

- 1 The applicant's application for the suspension of the respondent is dismissed.
 - 2 The applicant shall pay the wasted costs in respect of the appearances on 14 and 17 July 2025, as well as 28 August 2025.
 - 3 Save for the costs order in paragraph 2 above, each party shall be responsible for the payment of their own costs.
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JUDGMENT

Daffue J (Chesiwe J concurring)

Introduction

[1] An Eastern Cape attorney, admitted in that Division and practising there, decided to open a branch office in Bloemfontein. In the process, his path crossed with that of an admitted attorney and conveyancer who was provisionally suspended on 2 May 2025 and finally suspended on 7 August 2025.

[2] The facts in this case demonstrate the valuable roll fulfilled by the South African Legal Practice Council, the watchdog of the legal fraternity. It indeed tried to fulfil its duties *custos morum* as the guardian of morals of the legal profession. However, the question to be answered herein is whether it has not jumped the gun when it approached the court in seeking the attorney's interim suspension from practice in terms of s 43 of the Legal Practice Act 28 of 2014 (the LPA.)

The parties

[3] The applicant is the South African Legal Practice Council, duly established in terms of s 23 of the LPA. The chairperson of the Free State Provincial Council of the applicant deposed to the founding and replying affidavits.

[4] The respondent is Mr Thanduxolo Theophilus Mafanya (the practitioner), an adult male legal practitioner with LPC membership number 76234, practising as such for his own account under the name and style of Mafanya TT Attorneys Inc in Cofimvaba, Eastern Cape Province. On his version he opened a branch office in Bloemfontein on 16 May 2025 only, but closed it again on 30 May 2025.

The relief sought

[5] The applicant seeks the suspension of the practitioner from the practice of legal practitioners, together with the customary additional orders. These include that the practitioner shall surrender his certificate of admission and be prohibited from operating his trust banking account and other relevant accounts and that a *curator bonis* be appointed to immediately take control of his trust account, files and all relevant records, pending finalisation of a disciplinary hearing to be instituted against him; alternatively, an application to have his name struck from the roll of legal practitioners.

The litigation history

[6] The applicant's notice of motion was issued on 8 July 2025 and served the same day on the practitioner's secretary at his office in Cofimvaba, Eastern Cape. In terms thereof it intended to apply on 14 July 2025 on an urgent basis for a *rule nisi*, returnable on 21 August 2025.

[7] On 13 July 2025, the day before the intended hearing, the practitioner filed his answering affidavit to which the applicant replied on 14 July 2025, the day of the hearing. On that day, Mhlambi J let the matter stand down to 17 July 2025 on which day he removed the application from the roll due to lack of urgency. Leave was granted to the parties to file supplementary affidavits. The costs of 14 July 2025 stood over for later determination. Nothing was said about the costs of the appearance on 17 July 2025.

[8] Hereafter an 'administrative nightmare', the words used during oral argument by Mr Moruri, the applicant's attorney, occurred. Neither of the two parties filed any supplementary affidavits as authorised. On 18 August 2025 the applicant's attorney set the application down for hearing on the opposed roll of 4 September 2025. The date stamp on the notice of set down reflects 21 August 2025. On 21 August 2025, two further documents came to light. Firstly, the applicant's attorney filed a notice of removal of the

matter from the roll of 4 September 2025. Secondly, a notice of set down was served and filed on that same day for the application to be heard on 28 August 2025. This notice of set down was served on the practitioner's attorney of record at 14h22 on 21 August 2025.

[9] The practitioner was afforded a few hours only to file his heads of argument which would have to be filed before noon the next day in terms of the Practice Directives of this Division. The hearing date of 28 August 2025 was not arranged with the practitioner's attorney. On that day the matter was removed from the roll, costs to stand over for later adjudication. Hereafter, the application was enrolled for hearing on 11 September 2025 when we heard oral submissions.

In limine: lack of jurisdiction

[10] The practitioner denies that this Court has jurisdiction over him, the reason being that as of 30 May 2025 he no longer conducts business as an attorney in Bloemfontein. On his version, he has closed his Bloemfontein branch on that day and removed all signage from the premises. Furthermore, he is resident in the Eastern Cape where he has been practising as an attorney since 2021. The applicant's deponent states in the replying affidavit that he has been informed by the applicant's attorney that the signage remained displayed at the premises. This is inadmissible hearsay evidence due to the attorney's failure to depose to a confirmatory affidavit. Even if that is correct, it is not the applicant's case that the practitioner is still practising from the premises.

[11] The practitioner sought leave to open a branch office in Bloemfontein and in fact opened it. Files belonging to Ms Tladi, a suspended practitioner, were found in his Bloemfontein branch office, not at the address that he initially advised the applicant about, but at different premises, to wit the premises from where Ms Tladi conducted her practice before her suspension. An amount of R350 000 with reference, L Saila, was paid into the practitioner's trust account on 22 May 2025 and thereafter payments were made to a certain Maqhashalala (apparently in respect of a portion of the purchase price), to Ms Tladi in the amount of R10 000, whilst R5 500 was transferred for fees. These transactions occurred in Bloemfontein and should be properly investigated. The practitioner allowed a suspended practitioner to practise from his branch office. Her precise capacity at the branch office and her professional relationship with him needs to be investigated, as well as the practitioner's knowledge of Ms Tladi's misconduct. The

practitioner allowed Ms Tladi to practise as a conveyancer from his branch office after her provisional suspension. Whether or not he was aware of her predicament needs to be investigated. Furthermore, the practitioner failed to follow the required procedure for closure of his office. This is also an offence.

[12] Section 21 of the Superior Courts Act 10 of 2013 specifically grants jurisdiction to a Division of the High Court over 'all persons residing or being in, and in relation to all causes arising and all offences triable within, its are of jurisdiction and all other matters of which it may according to law take cognisance.' (Emphasis added.)

[13] The point *in limine* is without any substance whatsoever. This Court is entitled to adjudicate the application. Therefore, I shall consider the merits of the application during my evaluation hereunder.

Section 43 of the Legal Practice Act 28 of 2014

[14] The applicant seeks relief in terms of s 43 of the LPA, which reads as follows:

'43 Urgent legal proceedings

Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.' (Emphasis added.)

[15] I need to emphasise at this stage already that, as the heading to the section indicates, urgency needs to be proven in order to obtain relief under the section. The disciplinary body must also be satisfied that trust monies have been misappropriated, or that the practitioner is guilty of other serious misconduct. Also, the purpose of interdict proceedings is trite. It must be duly considered when considering relief under s 43. An interdict is not a remedy to deal with historical infringements of rights. It is utilised to prevent or prohibit present and/or reasonably apprehended future infringements. I shall return hereto during the evaluation of the evidence.

Evaluation of the facts and legal submissions

[16] I am satisfied that the practitioner has provided a tall tale, or as referred thereto in Afrikaans, 'n wolhaarstorie'. At first blush, his version appears to be not only flimsy, but improbable. However, I shall refrain from arriving at a conclusion when evaluating the versions placed before the court, bearing in mind the outcome arrived at eventually. If the applicant intends to proceed with disciplinary proceedings, the information placed before the Court, as well as further information to be provided by the parties, will eventually have to be considered and adjudicated by the applicant's disciplinary body. I do not intend to take over that role. Having said this, it is necessary to consider factual averments, especially as this may influence the discretion to be exercised pertaining to the award of costs. Before then, it is appropriate to mention some judgments that have seen the light after promulgation of the LPA.

[17] In *South African Legal Practice Council v Matee*¹ (*Matee*) the practitioner was practising without a Fidelity Fund Certificate in conflict with the LPA. In doing so, he was committing a criminal offence. There was also clear evidence that he misappropriated trust funds. Consequently, I granted an order in terms of s 43. The facts in this case are totally distinguishable from the facts in *Matee*.

[18] In *South African Legal Practice Council v Maree and Others* (*Maree*)² my sister, Chesiwe J and I, granted orders in terms of s 43 of the LPA. The practitioner was suspended from practice pending the finalisation of investigations into his conduct and the outcome of a disciplinary hearing. We directed the investigations and hearing to be concluded on/or before 30 May 2025, which afforded the applicant a period of seven months to get its ducks in a row. Again, the facts in *Maree* are clearly distinguishable from the facts *in casu*. *Maree* has been practising without a Fidelity Fund Certificate and opened a law practice without the knowledge and consent of the applicant. On a balance of probabilities and/or based on material common cause facts he contravened several provisions of the LPA.

¹ *South African Legal Practice Council v Matee* [2024] ZAFSHC 118.

² *South African Legal Practice Council v Maree and Others* [2024] ZAFSHC 352.

[19] I emphasised in *Maree* that although the applicant is the guardian of morals of the legal profession, it will only be entitled to relief in terms of s 43 if sufficient facts are placed before the Court to show either a misappropriation of trust monies, or that the practitioner is guilty of other serious misconduct.³ This is line with what the Supreme Court of Appeal stated in *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (Chueu)*.⁴

[20] Whatever transpired in this case during May 2025 is in essence done business. The applicant has been provided with the trust bank statements of the practitioner for the period from January 2025 until May 2025. The Saila transaction was the only transaction that came under the spotlight. Mr Saila made it clear in writing that he did not wish to file a complaint against the practitioner. The practitioner closed the Bloemfontein branch office and left the jurisdiction of this Court. This does not mean that his alleged misconduct in Bloemfontein may not be investigated. Disciplinary steps may thereafter be taken if so advised. The applicant's Provincial Council will have the right to continue with disciplinary proceedings against the practitioner in the Free State premised on facts that the practitioner has either misappropriated trust funds or committed other serious misconduct. This Court will be entitled to adjudicate a striking-off application, or one for suspension, when approached by the applicant.

[21] There is no evidence that the applicant's Provincial Council has been in contact with its counterpart in the Eastern Cape to establish the standing of the practitioner. I accept that the practitioner is in good standing and in possession of the required Fidelity Fund Certificate. An interim order is not required to protect the public at large, or the practitioner's present or prospective clients. No case has been made for relief under s 43.

[22] It is appropriate, bearing in mind what I have said earlier, that I comment on some of the findings of the applicant's Investigation Committee (IC). I find it improbable that the practitioner was unaware of Ms Tladi's predicament. If he was totally unaware thereof, he surely would have informed the applicant from the onset that she would be running the Bloemfontein branch office and/or that she would be conducting his new firm's conveyancing department. This he failed to do. Her name was never mentioned at all. If

³ *Ibid* para 15.

⁴ *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others* [2023] ZASCA 112 para 20.

he informed the applicant accordingly, its personnel would on all probabilities have told him of the imminent application to suspend her. Logic dictates that they would never have proceeded with the approval process, well-knowing that she would be managing the new office in the practitioner's absence.

[23] Several requests were unsuccessfully made by the applicant to ascertain who would oversee the Bloemfontein branch. Eventually on 26 May 2025 an email was received by the applicant, indicating the name of a certain Rankhododo. This was probably done to pull the wool over the applicant's proverbial eyes. The practitioner testifies in the answering affidavit about his business dealings with Ms Tladi. Contrary thereto, he denied any such business dealings with her when he appeared before the applicant's IC on 3 June 2025. He informed the IC that he was merely taking over her lease in respect of the business premises.

[24] The practitioner tries to avoid a negative inference about his knowledge of the litigation against Ms Tladi by alleging that she was authorised by him to apply for approval to open a new branch. On his version, he merely presented her with the documents required by the applicant. She was the person communicating with the applicant at all times. In my opinion, this is far-fetched. He tries to create the impression that he was not involved in the approval process at all. I do not accept this, but even it is true, the practitioner cannot overcome the next hurdle. In *Chueu*⁵ the Supreme Court of Appeal reiterated the trite principle that directors have a fiduciary duty towards the company of which they are directors and cannot plead ignorance of financial matters when faced with allegations of misappropriation of trust funds. In my view this principle applies *mutatis mutandis* to other serious misconduct as alleged *in casu*. If the practitioner's version is accepted, he must still take the blame for negating his responsibilities by allowing Ms Tladi to apply for approval.

[25] According to the practitioner, he was under the impression that Ms Tladi was a legal practitioner in good standing until being informed by the applicant that she has been suspended. This needs to be further investigated and does not require this Court's attention. I reiterate that I find it strange that the practitioner could allow Ms Tladi to operate under his name and utilise his trust account, but nowhere in the correspondence

⁵ *Ibid* para 26.

between the practitioner and the applicant is there any reference to Ms Tladi's involvement. He also changed the address of his law firm after his initial application for consent to open a branch office. Coincidentally, the new address is at the same premises previously occupied by Ms Tladi. Her files, which she was supposed to hand over to the applicant after her suspension, were found by employees of the applicant in the practitioner's office. The contents of some of her files were found in the practitioner's files without any mandates by clients in favour of the practitioner. The personnel found on the premises previously worked for Ms Tladi. During the inspection, Ms Tladi arrived at the premises.

Costs

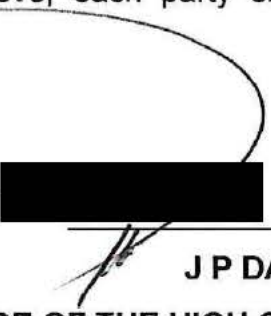
[26] The costs of the proceedings on 14 July 2025 and 28 August 2025 stood over for later adjudication. Nothing was said about the costs of 17 July 2025, but the court ruled that the matter was not urgent and removed it from the roll. On 28 August 2025 the set down occurred as a result of 'an administrative nightmare' in the words of the applicant's attorney. There is no reason why the practitioner should not be entitled to the costs in these three instances. An appropriate order will be made.

[27] The respondent would in principle be entitled to the costs of the application insofar as he has achieved success in opposing it. He even submitted that costs on an attorney and client scale should be awarded to him. I considered the submissions and the evidence presented to us. I am satisfied that the applicant should not be penalised with a costs order against it in respect of the application, save for the wasted costs mentioned in the previous paragraph. Serious issues have been raised. I have reason to believe that the practitioner has not provided a candid version. He and Ms Tladi were engaged in a professional relationship and this was never communicated to the applicant. The only issue is really whether he could have been aware of the disciplinary steps anticipated and eventually taken against her which culminated in the suspension order of 2 May 2025. As indicated, that is for the applicant's disciplinary body to consider.

Order

- 1 The applicant's application for the suspension of the respondent is dismissed.
- 2 The applicant shall pay the wasted costs in respect of the appearances on 14 and 17 July 2025, as well as 28 August 2025.

3 Save for the costs order made in paragraph 2 above, each party shall be responsible for the payment of their own costs.



J P DAFFUE
JUDGE OF THE HIGH COURT

I concur.



S CHESWE
JUDGE OF THE HIGH COURT

Appearances

For the Applicant: K Moruri
Instructed by: Moruri Attorneys Inc, Bloemfontein.

For the Respondent: Z Nyezi
Instructed by: LM Attorneys & Partners, Bloemfontein.