



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

Not reportable

Case no: 62/2025

In the matter between:

OUPA DANIEL MOHAPI

APPLICANT

and

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL
(FREE STATE PROVINCIAL OFFICE)**

RESPONDENT

(For the applicant's readmission and
re-enrolment as attorney of the High Court)

Neutral citation: *Mohapi v The South African Legal Practice Council (Free State Provincial Office)* (62/2025) [2025] ZAFSHC 379 (27 November 2025)

Coram: Daffue et Chesiwe JJ

Heard: 20 November 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 16h00 on 27 November 2025.

Summary: Application for readmission as attorney – the applicant was struck from the roll more than 25 years ago – instead of presenting facts to show that he is a fit and proper person to practise again, the applicant attacked the validity of the court proceedings to strike him from the roll, alleging that these were null and void and that the court order is a nullity – the applicant neither opposed the striking off application, nor applied to rescind the order or seek leave to appeal – application for readmission refused.

ORDER

The applicant's application to be readmitted as an attorney of the High Court is dismissed with costs, excluding the costs occasioned by the postponement on 13 November 2025.

JUDGMENT

Daffue J

Introduction

[1] A 65-year-old male person is the applicant in the proceedings before us for his readmission as attorney. He was admitted as an attorney on 16 November 1995, whereafter he commenced practising as such under the name and style of Messrs OD Mohapi Attorneys in Welkom. On 26 October 2000, under application number 29/2000, he was struck from the roll of attorneys on application of the former *Prokureursorde van die Oranje Vrystaat (the Law Society)*, the predecessor of the Free State Provincial Office of the South African Legal Practice Council (the LPC).

The parties

[2] The applicant is Mr Oupa Daniel Mohapi, an adult male person residing in Vereeniging, Gauteng. He personally drafted the application papers and represented himself in the opposed application for his readmission as attorney.

[3] Although the applicant elected to refer to this application as an *ex parte* application, he served the notice of motion and annexures on the Free State Provincial Office of the LPC on 10 January 2025. Contrary to rule 4 of the Uniform Rules of Court, he personally hand-delivered the application papers instead of having them served by the Sheriff.

The relief sought

[4] The applicant seeks the following relief in the notice of motion, quoted *verbatim*:

- '1. Re-admitting and enrolling the Applicant as an Attorney of the High Court in terms of Section 24 and 114 of Legal Practice Act read with Section 15 of the Attorneys Act 53 of 1979
2. Granting further and or alternative relief as the Honourable Court deems fit.
3. Applicant hereby tenders the costs of this Application unless unnecessarily opposed.'

[5] He did not appoint an address within 25 km from the High Court in accordance with the Uniform Rules of Court but merely provided his cellphone number and two email addresses underneath his signature on the notice of motion.

Brief history of the litigation

[6] I mentioned that the Law Society brought the application to strike the applicant's name from the roll of attorneys. This occurred in terms of the Attorneys Act 53 of 1979 which has since been repealed by the Legal Practice Act 28 of 2014 (the LPA). Notwithstanding proper service, confirmed by the applicant during oral argument, he did not oppose the striking off application. Consequently, on 26 October 2000, his name was struck from the roll of attorneys. The applicant did not apply for rescission of this order or for leave to appeal. More than 25 years has now lapsed.

[7] During 2021, the applicant issued an application under application number 2012/2021 in terms whereof he sought his readmission as attorney. That application was opposed by the LPC who filed answering affidavits. The matter was enrolled for hearing, but the applicant filed a notice to remove it from the roll. Hereafter, the applicant filed a notice of withdrawal, apparently intending to withdraw that application, but he incorrectly cited case number 2012/2020 in his notice of withdrawal instead of 2012/2021. He never obtained leave from the court or the LPC to withdraw the 2021 application (on the assumption that a mere typing error occurred on the notice of withdrawal).

[8] Nearly four years later the applicant brought the present application. He attached to his founding affidavit the striking off application of the Law Society as annexure ODM3. The founding affidavit of the Law Society was deposed to by its president at the time, Mr JJ Maree. More about this later when I evaluate the evidence. The applicant also attached to his founding affidavit a portion of a transcription of the criminal proceedings instituted

against him in the Regional Court to show that he was acquitted on various criminal charges against him. He did not file the complete record of proceedings, and it is uncertain what the charges were and on what basis he was acquitted. However, I deem it is unnecessary to consider the transcript in any detail and/or his version in this regard, bearing in mind the outcome of this application.

[9] Notwithstanding service of the present application on it on 10 January 2025, the LPC resolved only on 24 March 2025 to oppose the application for readmission. It failed to instruct its attorneys at that stage. On 4 September 2025, the applicant enrolled the application for hearing on 13 November 2025 in the absence of any notice of opposition. This alerted the LPC, whereupon it instructed its attorneys of record to oppose the application. Much has been said between the parties pertaining to the filing of affidavits, but answering and replying affidavits have in fact been filed and the matter was eventually ripe for hearing.

[10] The LPC's attorney was not available to argue the matter on 13 November 2025 due to other commitments and sought a postponement which the applicant refused to grant. When the matter was allocated to us, only one set of papers, to wit an incomplete set consisting of only the applicant's notice of motion and annexures thereto and his heads of argument, formed part of the record. Arrangements were made with the LPC's attorney to ensure that two full sets of application papers be provided, which he did.

[11] Due to the applicant's refusal to agree to a postponement as requested, the LPC's attorney prepared a formal application for postponement to have the matter postponed from 13 November 2025 to 20 November 2025. On the morning of 13 November 2025, the applicant informed us that the parties had agreed to a postponement to 20 November 2025, costs to stand over. Such an order was made. On 20 November 2025 we heard legal argument, whereafter we reserved our judgment.

Legal principles

[12] It is apposite to mention some authorities to adjudicate the applicant's conduct in these proceedings. In *Malan and Another v Law Society of the Northern Provinces*¹

¹ *Malan and Another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA); [2009] 1 All SA 133 (SCA) paras 27 and 28.

Harms ADP stated the following:

'[27] . . . If one turns to the bookkeeping charges, the position is simply that there is no allegation of a realization of the seriousness of the offences. They are brushed off on the basis that the Society had failed to prove a trust shortage, that the bookkeeper had erred, that they did not know the rules, that their auditors had erred, or simply by not dealing with the pertinent allegations. Furthermore, instead of dealing with the merits of the allegations, the appellants conducted a paper war and they attacked the Society and its officers, they attacked the Fidelity Fund and they attacked the attorneys who had to take over their files – in short, their approach on the papers was obstructionist.

[28] These factors are "aggravating" and not extenuating because they manifest character defects, a lack of integrity, a lack of judgment and a lack of insight.'

[13] A year later the Supreme Court of Appeal stated the following in *Law Society of the Northern Provinces v Mogami and Others*:²

'Very serious, however, is the respondents' dishonest conduct of the proceedings. Instead of dealing with the issues they launched an unbridled attack on the appellant. It has become a common occurrence for persons accused of a wrongdoing, instead of confronting the allegation, to accuse the accuser and seek to break down the institution involved. This judgment must serve as a warning to legal practitioners that courts cannot countenance this strategy. In itself it is unprofessional. The problem is that the respondents' professional body appears to have instigated their behaviour and aided and abetted them in making untruthful denials, ignoring laws and court judgments, and launching an attack on the appellant. Had it not been for the invidious role of their society I would have had little hesitation to find that the respondents were not fit to continue practising.'

[14] In *Johannesburg Society of Advocates and Another v Nthai and Others*³ (*Nthai*) the court stated the following:

'What this demonstrates is an obstructive attitude on the part of Mr Nthai, aimed at preventing proper scrutiny of his readmission; hardly that of a reformed person who deserves readmission. His persistence in turning his back on the truth, gratuitous insults and intemperate language constitutes evidence that since his striking off he has developed no insight and no greater perception of what is expected of him. This, it seems to me, is a defect of character which, going forward, is hardly likely to be ameliorated.'

² *Law Society of the Northern Provinces v Mogami and Others* [2009] ZASCA 107; 2010 (1) SA 186 (SCA); [2010] 1 All SA 315 (SCA) para 26.

³ *Johannesburg Society of Advocates and Another v Nthai and Others* [2020] ZASCA 171; 2021 (2) SA 343 (SCA); [2021] 2 All SA 37 (SCA) para 97.

[15] In *Nthai* the court continued as follows:

'... Where, as here, an applicant for readmission has demonstrated a propensity for inherent dishonesty, "his prospects of being readmitted to what after all is an honourable profession, will be very slim indeed. Only in the most exceptional of circumstances, where he has worked to expiate the results of his conduct and to satisfy the court that he has changed completely, will a court consider readmission at all." Mr Nthai has not demonstrated such exceptional circumstances.'⁴

[16] In *Swartzberg v Law Society of the Northern Provinces*,⁵ (*Swartzberg*) a decision relied upon in *Nthai*, the appellant for readmission as an attorney was struck from the roll for failing to keep proper books of account, theft of trust monies and fraud. The Supreme Court of Appeal in *Swartzberg*⁶ quoted the following *dictum* in *Law Society, Transvaal v Behrman*⁷ with approval:

'... the onus is on him to convince the Court on a balance of probabilities that there has been a genuine, complete and permanent reformation on his part; that the defect of character or attitude which led to him being adjudged not fit and proper no longer exists; and that, if he is re-admitted, he will in future conduct himself as an honourable member of the profession and will be someone who can be trusted to carry out the duties of an attorney in a satisfactory way as far as members of the public are concerned.'

[17] In *Swartzberg* the court mentioned that the following factors should be considered in determining whether an applicant for readmission has discharged the onus:⁸

- a. the nature and degree of the conduct which occasioned the applicant's removal from the roll;
- b. the explanation afforded by the applicant for such conduct;
- c. the applicant's conduct in an enquiry into their removal;
- d. the application for readmission;
- e. the time lapse between the removal and the application for readmission;
- f. the activities after the removal;
- g. the expression of contrition and its genuineness; and
- h. the efforts at repairing the harm which their conduct may have occasioned to

⁴ *Ibid* para 98.

⁵ *Swartzberg v Law Society of the Northern Provinces* [2008] ZASCA 36; [2008] 3 All SA 438 (SCA); 2008 (5) SA 322 (SCA).

⁶ *Ibid* para 14.

⁷ *Law Society, Transvaal v Behrman* 1981 (4) SA 538 (A) at 557B-C.

⁸ Footnote 5 para 15; see also paras 23, 28 and 32.

others.

[18] In *Johannesburg Society of Advocates v Edeling*,⁹ Mr Edeling convinced the High Court to readmit him as an advocate, but the Supreme Court of Appeal held a different view. It upheld the appeal by the Johannesburg Society of Advocates. Mr Edeling relied on the successes he had achieved as legal practitioner in Swaziland and Lesotho after he was struck from the roll in South Africa, but his endeavours did not find favour with the Supreme Court of Appeal. It responded as follows:

'Mr Edeling while proclaiming his honesty, integrity, and remorse, repeatedly failed to acknowledge in express terms that he was struck off for dishonesty. Nor did he demonstrate that he appreciated and accepted this. Indeed his conduct since then has always been consistent with an endeavour to downplay the seriousness of his misconduct. He did not disclose matters germane to the question of his readmission as an advocate. This failure undermined his assertion that he had genuinely, completely and permanently reformed and that he could be trusted to carry out the duties of an advocate in a satisfactory way as far as members of the public are concerned. His lack of candour about his dishonesty and a paucity of information about his reformation was a fatal barrier for his re-admission as an advocate. Many years have passed, and even though Mr Edeling has expressed contrition and repentance, it is clear that he has not accepted the gravity of his conduct. It followed that he failed to discharge the onus of satisfying the court that he was a fit and proper person to be re-admitted as an advocate.'¹⁰

[19] I quoted some of the authorities in some detail to show that applicants for re-admission as legal practitioners, either as attorneys or advocates, must prove that they are fit and proper persons to be allowed to practise again. In *Swartzberg*, the court referred to a 'heavy duty' resting upon an applicant.

Evaluation of the evidence and submissions

[20] I do not intend to deal in any detail with the allegations of misconduct against the applicant, save to mention a few aspects. His trust bank account showed a trust deficit of more than R40 000 on at least two occasions. He used this account to pay business expenses such as salaries. He failed to account to a client, Ms Susan Sekobotho in respect of an amount of R107 776, which amount he either used to pay another trust creditor or utilised for his own advantage. The trust deficit relied upon by the Law Society

⁹ *Johannesburg Society of Advocates v Edeling* [2019] ZASCA 40; 2019 (5) SA 79 (SCA) para 36.

¹⁰ *Ibid* para 36.

was later confirmed by the Attorneys Fidelity Fund (the AFF). The applicant attached documentary proof of this to his founding affidavit. He still owed the AFF an amount of R81 134.40 as recorded in its letter dated 27 September 2017. The AFF *inter alia* settled the claims of his trust creditors in the total amount of R119 597.11 but received only R79 105.13 in respect of trust monies. The remainder of the debt is in respect of curator's fees and the costs of the striking off application. Although the applicant agreed with the AFF in writing to repay the outstanding amount, he paid an amount of R16 226.88 only on 21 December 2017. There is still a huge amount outstanding which the applicant is at present allegedly unable to pay due to his unemployment.

[21] The applicant mentioned that he remained unemployed for most of the time after his striking off application. However, he was employed as a senior legal counsellor with Legal Wise in Johannesburg from June 2006 to 2012. He stated that he learned enormously from 'miscalculated mistakes' and continued as follows:

'I humbly submit that I have vagrantly (sic) violated and transgressed the rules of the Law Society as alleged and any explanation I proffered in the undermentioned paragraphs does not in any manner justify my actions and I greatly regret. I hereby solemnly declare should I happen to be fortunate to be granted another opportunity, I shall under no circumstances whatsoever repeat same.

...

Let me hasten to point out what I have been through left an indelible lesson in both my personal life and legal practice.'

In respect of Ms Sekobotho he stated:

'I failed her dismally and transgressed the rules of which I again regret.'

[22] He also admitted that he 'wrongfully and unlawfully issued the trust cheques in my name or one of the employees in respect of most criminal matters that were finalized for payment of the overheads.' The applicant admitted that he did not operate a business account at the time and used his trust account for paying business expenses.

[23] In 2019 the applicant attended a practice management course. According to him, he submitted assignments, 'though not all of them'. He intends to proceed and fully commit himself to submit the outstanding assignments. Contrary to his version, the LPC attached to its replying affidavit a letter addressed to the applicant indicating that 'he hardly submitted any assessments in respect of the 2019 programme'.

[24] Save for the aforesaid allegations, the remainder of the founding affidavit is taken up by disputing the version put up by the Law Society in the striking off application. The applicant severely criticised the Law Society. According to him, it did not resolve to remove his name off the roll. He used the opportunity to attack the president and other office bearers of the Law Society and continued in this mode in his replying affidavit and heads of argument. On his version, its president acted on a frolic of his own and brought the application in his own name. He and the former office bearers of the Law Society were accused of abusing the name of the Law Society, submitting that the process embarked upon to strike him off was scandalous and called for decisive correction by the Court to undo that injustice. According to him, the injustice done to him was by a 'clique of the then officials of the Law Society. . . . that misled this honourable court.'

[25] The applicant even suggested that the judges that struck him from the roll acted wrongfully. His allegation that the order of this Court to strike him from the roll is a nullity is indicative of his attitude. He submitted that 'the finding of unfitness secured fraudulently must be reversed.'

[26] The applicant's accusations that the Law Society through its president and other office bearers acted vexatiously and/or unethically and/or with the intention to mislead the court deserve serious criticism. His attitude is unprofessional and proof that he is not entitled to again become a member of an honourable profession. He knew in 2000 that he had a right to oppose the striking off application but did nothing to put up a defence. He also knew that he had legal remedies available if the order was erroneously or even unlawfully granted as now alleged. Yet, he did nothing for over two decades. His first application for readmission was aborted without tendering costs. Four years later a new application for readmission surfaced.

[27] I am satisfied, as the court held in *Nthai*, that the applicant failed to show exceptional circumstances to be readmitted as an attorney. He has not reformed. He failed to properly express regret and shame. There is no supporting evidence from anyone, not to speak of people of different walks of life, to support his readmission. He has also failed to produce any evidence to show that he will be able to conduct himself as a trustworthy legal practitioner, after having been out of the profession for 25 years.

The applicant's circumstances are totally different from that of the applicant in *Kudo v Cape Law Society*.¹¹ The applicant's attitude is sufficient proof that he should not be allowed to practise as an attorney again.

Costs

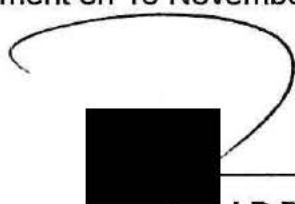
[28] It is trite that attorney and client costs are usually granted in favour of the LPC in like matters. Having said this, I would fail my duty if I do not comment on the LPC's conduct. The LPC should set an example to its members as to how litigation should be conducted. I find it deplorable that it waited more than two months before taking a resolution to oppose the applicant's application, bearing in mind the time limits provided in the Uniform Rules of Court. Then, instead of instructing attorneys, it did nothing until a notice of set down was served on it eight months later. There was also insufficient reason not to instruct junior counsel to argue the application set down for 13 November 2025. By then, the LPC's heads of arguments have been filed and most junior counsel would be able to present a decent oral argument. This is an appropriate case to award party and party costs instead of attorney and client costs. Furthermore, no order shall be made in respect of the costs reserved on 13 November 2025.

Order

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

The applicant's application to be readmitted as an attorney of the High Court is dismissed with costs, excluding the costs occasioned by the postponement on 13 November 2025.

I concur


J P DAFFUE
JUDGE OF THE HIGH COURT


S CHESUWE
JUDGE OF THE HIGH COURT

¹¹ *Kudo v Cape Law Society* 1977 (4) SA 659 (A) 676 A-D at 680.

Appearances

For the Applicant: In person

For the Respondent: D Qwelane

Instructed by: Qwelane Theron & Van Niekerk Inc, Bloemfontein.