**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO:53307/21**

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

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DATE 14/ 01/2026 LENYAI J

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL** **Applicant**

And

**HOSEA RENDANI MUNYAI** **Respondent**

*Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down* is *deemed to be 14:00 on 14 January 2026*

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**JUDGMENT**

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**LENYAI J ( MAKHOBA J CONCURRING)**

[1] The applicant seeks an order that the respondent's name be struck off the roll of legal practitioners, alternatively, that he be suspended from practice as a legal practitioner.

[2] The applicant further seeks an order for the appointment of a Curator Bonis to take control of the respondent's trust account as well as an order for the appointment of an auditor to inspect the accounting records of the respondent.

[3] Furthermore, the applicant seeks that the costs of this application be ordered against the respondent on an attorney and client scale.

[4] The applicant submits that the matter was initially enrolled as an urgent application which was set down for the 30th November 2021. However, due to new evidence being submitted by the respondent in his supplementary affidavit filed on the 25th November 2021 the matter had to be removed from the roll to afford the applicant an opportunity to review the new evidence and form a new approach. The matter was re-enrolled for the 13th February 2025 and had to be removed from the roll as the court condoned the late filling of the respondent's answering affidavit in respect of the applicant's supplementary founding affidavit. The court further condoned the late filling of the applicant's replying affidavit in respect of the respondent's supplementary answering affidavit. The costs were reserved.

[5] The applicant avers that the initial accountant who conducted the investigation on its behalf was no longer in its employ, and this resulted in the entire file being handed over to a new accountant to conduct his own investigation. The matter was delayed for some time. This delay was compounded by the fact

that the respondent did not cooperate with the investigation and as such the new accountant was unable to finalise the investigation timeously. The investigation was eventually completed by the beginning of 2024.

[6] The applicant avers that the purpose of this application is:

6.1 To submit to the Court facts which the applicant contends constitute such a deviation from the standards of professional conduct that the respondent is not a fit and proper person to continue to practice as an attorney and which will justify the Court in ordering that the respondent be struck off the roll of legal practitioners, alternatively suspended from practicing as an attorney on such terms and conditions as the Court may deem appropriate;

6.2 The Court's jurisdiction and power to exercise disciplinary jurisdiction over the respondent and to pronounce an appropriate sanction is not derived solely from the provisions of sections 40(3)(a)(iv), 43 and 44(1) of the Legal Practice Act (LPA). The Court's jurisdiction is inherent and is also derived from common law;

6.3 Section 43 of the LPA provides that, 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 to suspend the legal practitioner from practice and to obtain alternate interim relief;

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

[7] The applicant further submits that it is pertinent that it should briefly record certain general principles concerning a legal practitioner, the profession and the functions of the Council in regard to a legal practitioner and the conduct of his/her profession, namely:

7.1 A legal practitioner is a professional person whose independence and freedom in the conduct of his/her practice are recognised and preserved within the limits of the law and the rules of professional conduct, under which a legal practitioner should conduct his/her practice with a high degree of independence and integrity;

7.2 The profession itself is not a mere calling or occupation by which a person earns a living. A legal practitioner is a member of a learned, respected and hounarable profession and by entering it, one pledges himself/herself with total and unquestionable integrity to the society at large, the courts and to the profession. The applicant submits that only the highest standard of conduct and repute and good faith are consistent with membership of the legal profession which can function effectively if it inspires the unconditional confidence and trust of the public. The image and standing of the legal profession are judged by the conduct and reputation of all legal practitioners and to maintain this confidence and trust, all legal practitioners must exhibit the qualities set out above at all times;

7.3 The legal profession can only fulfil its obligations to the community and comply with its role in the administration of justice in the country if it inspires and maintains the unconditional confidence of the community and if legal practitioners devote their absolute integrity to the conduct of their profession and to the fulfillment of all the requirements demanded of the profession and its members;

7.4 The integrity of any legal practitioner should manifest itself in a situation where he/she must prefer the interests of his/her client above his/her own;

7.5 It is required of any legal practitioner that he/she observes scrupulously and complies with the provisions of the LPA, the LPA Rules and the Code of Conduct;

7.6 It is of particular importance that a legal practitioner complies with the provisions of the LPA, the LPA Rules and the Code of Conduct in relation to the money of a client which is placed into his/her custody and control. Such money, generally known as trust money, does not form part of the assets of a legal practitioner. The very essence of a trust fund is the absence of risk and the confidence created thereby. The Council has always adopted the view that there can be no excuse for a legal practitioner not to comply with each and every one of the requirements which directly or indirectly relate to trust monies. The unjustifiable handling of trust money is totally untenable and not only frustrates the legal requirements relating to trust money but also undermines the principle that a trust account is completely safe in respect of money held therein by a legal practitioner on behalf of another person;

7.7 The law expects from a legal practitioner *uberrima fides* – the highest possible degree of good faith – in his/her dealings with clients, which implies that at all times his/her submissions and representations to clients must be accurate, honest and frank;

7.8 In pecuniary matters a legal practitioner must be most punctual and diligent. He/she shall not retain money belonging to clients longer than is absolutely necessary and must account to clients for monies received by him in a proper and diligent manner;

7.9 A legal practitioner must not appropriate for his own use monies received on behalf of a client for whom he/she is acting, without the permission or authority of the client to do so;

7.10 A legal practitioner must never abuse the position of trust and the fiduciary relationship that should exist between a legal practitioner and his/her client.

7.11 Though in the conduct of his/her professional services, a legal practitioner may delegate certain tasks to his/her staff, it remains the responsibility of the legal practitioner to see that the work is completed with proper care and diligence. The legal practitioner is answerable if a member of his/her staff transgresses the law or the rules of professional conduct in relation to the legal practitioner's practice.

[8] The applicant submits that the respondent's actions over a period of time are irreconcilable with the values of the legal profession and fail to meet the pro-

fessional standards required under South African Law as well as those established by the LPC. The respondent's conduct has led to numerous complaints from clients, which have been the subject of detailed investigations by the LPC.

[9] The applicant further submits that despite efforts to engage with the respondent to rectify his actions, he has failed to respond appropriately, demonstrating a lack of accountability, responsibility and commitment to upholding the integrity of the legal profession.

[10] The applicant says the following encapsulates its case for the suspension alternatively the striking off of the respondent:

10.1 Failure to account for funds held in trust on behalf of clients;

10.2 Misappropriation of trust funds;

10.3 Non-compliance with trust regulations as prescribed under the LPA and the Rules of the Legal Practice Council ( LPC);

10.4 Neglect of client instructions;

10.5 Failure to provide proper client care and fulfil professional obligations;

10.6 Non-compliance with the LPC in its investigations.

[11] The applicant submits that after receiving a number of complaints against the respondent, it instructed an independent chartered accountant, Ms Puseletso Hlogoana to visit the respondent's firm and inspect the financial and accounting records and practice affairs of the respondent. Ms Hlogoana was also tasked to investigate the complaints and produce a report. The facts and cir-

cumstances that prompted the applicant to bring this application are the following:

11.1 The respondent contravened Rule 54.10 of the Rules of the LPC in that he does not update his trust accounting records on a monthly basis and actually does so on a quarterly basis;

11.2 The investigation by Ms Hlogoana revealed that the total of the respondent's trust creditors' ledger accounts as at 28 February 2020 amounted to R1 500 474.42. This indicated that the total trust creditors' listing was understated by an amount of R1 135 739.48 in the respondent's annual statement. The understatement is only if the trust creditors' ledger as furnished is to be considered complete, otherwise the understatement could be more.

11.3 The respondent contravened Rule 54.14.8 of the Rules of the LPC in that he did not ensure that the total amount in the trust account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors' listing. This is an indication of a deficit trust account.

11.4 The respondent contravened Rule 54.14.10 of the Rules of the LPC in that he failed to immediately report the firm's trust deficit to the LPC.

11.5 The respondent contravened Rule 54.14.14 of the Rules of the LPC in that he made withdrawals from the trust account meant for trust creditors only.

11.6 The respondent contravened Clause 18.14 of the Code of Conduct in that he failed to perform professional work of a kind commonly performed by an attorney with such a degree of skill, care or attention, or of such quality or standard as may be expected from an attorney.

11.7 The respondent contravened Clause 3.3.4 of the LPC Code of Conduct in that he failed to maintain the ethical standards as prescribed by the Code or any ethical standards generally recognised by the profession.

[12] The applicant submits that there were numerous complaints lodged against the respondent and the following complaints were stated in the founding affidavit:

12.1 **Complaint by Mr Siboniso Ntandane:**

12.1.1 Mr. Ntandane hired the respondent to assist with a property transfer. The deed of sale was signed on 26th April 2018, with a three month finalisation period. He paid an amount of R 350 000.00 into the respondent's trust account on 22nd May 2018. Later in 2019, he paid an additional R 2 500.00 to an employee of the respondent's firm for a clearance certificate, which was required by the municipality. Since April 2019, the respondent has failed to communicate or account to Mr Ntandane regarding the transfer.

12.1.2 Investigations by Ms Hlogoana have revealed that Mr Ntandane has been occupying the property since 2018, and there were rates and taxes that accumulated, and he refused to pay the invoice. This resulted in delays in the finalisation of the transfer of the property into his name. This matter was resolved as the property was registered in Mr Ntandane’s name on 21st December 2020.

[13] **Complaint by Mr Hlayiseka David Maluleke:**

13.1 Mr Maluleke enlisted the respondent's services in the case of a property transfer, and the purchase price was R 75 000.00. He paid R 68 000.00 to an agent named Philile and R 6 500.00 to the respondent for transfer fees. The contract was cancelled on 10th October 2019 after he was informed that the property had already been sold. The respondent agreed to either refund the money or find a new property for Mr Maluleke. Four weeks later, the property was found to be occupied by another person who allegedly bought it from the same agent and the respondent. Mr Maluleke has received a partial refund of R 29 000.00, but a remaining balance of R 39 500.00 is still outstanding. The Respondent has neither paid the outstanding balance nor responded to Mr Maluleke's communications regarding the issue as the date of the complaint.

13.2 In response to this complaint the respondent stipulates the following:

Mr Maluleke first reported the matter on 4th September 2020. He bought a stand in Orange Farm from an agent named Philile for R 75 000.00, which was paid to the agent's bank account. Mr Maluleke, the seller, and the agent went to the respondent's office to have an employee named Gundo draft the deed of sale. Gundo allegedly advised that R 6 500.00 was needed for transfer costs. Mr Maluleke paid R 68 500.00 to the agent's account and R 6 500.00 to the respondent's trust bank account.

13.2 The respondent requested proof of payment from Mr Maluleke but found that no money was paid to his firm's bank accounts. The transaction was facilitated by agents, and the respondent undertook to investigate the matter further. An employee of the firm, Gundo, informed the respondent that the firm's fees were to be paid after clearance figures were obtained. The respondent notified Mr Maluleke that the firm was not involved in the sale and received no money, advising that the matter should be taken up with the agents. The respondent asserted that the R 29 000.00 refund made to Mr Maluleke did not originate from his office.

13.3 According to the proof furnished, an amount of R 75 000.00 was paid to two beneficiaries, Phelile Sekhoto received an amount of R 68 500.00 and Mavesi Enterprises (Pty) Ltd received an amount of R 6 500.00. The director of Mavesi, Mr Chris Northwell Mathebula, repaid R29 000.00 to Maluleke on 27 July 2020. Mr Mathebula was a registered attorney with the former Law Society of the Northern Provinces but was struck from the roll of practicing attorneys on 29th March 2012.

13.4 The applicant submits that upon an inspection of the firm's trust account by Ms Hlogoana during the month of October 2019, it was established that no amount of R 6 500 was paid into the trust account. It is unclear if the respondent colluded with Mr Mathebula or if Mr Maluleke was defrauded by the agent and Mr Mathebula. Additionally, the respondent advised that Gundo was an employee of the firm but did not specify his capacity and whether he had authorised him to draft the deed of sale on his behalf.

[14] **Complaint by Brian Alberts & Associates Inc:**

14.1 Mr Brian Alberts on behalf of Brian Alberts & Associates Inc lodged a complaint with the applicant on 13th May 2019. His firm was instructed by Mr Mufasa to handle a property transfer of a property situated at Erf 3[...] Protea Glen, which was finalised on 11th October 2018. When Mr Mufasa tried to take possession of the property, he found the property was already occupied by a Ms Kobye, who claimed she had purchased it and paid the full purchase price to the respondent's firm.

14.2 A meeting was held between Mr Brian Alberts and a representative from the respondent's firm, who stated that their transfer was based on a letter of executorship, however the registration never occurred. Mr Brian Alberts claimed his transfer was based on a different letter. The respondent has refused to communicate with them.

14.3 Based on the discussions between Ms Hlogoana and the respondent, the respondent indicated that the allegations in the complaint were false. He advised the applicant that he never communicated with Mr Alberts as the matter involves the Master of the High Court. He also indicated that he had lodged an application with the High Court regarding this matter and the matter is still pending. He further advised that he never received any money in his trust account relating to this matter.

14.4 The applicant states that at the time Ms Hlogoana submitted her report, the respondent had not furnished her with proof of the High Court application and thus she could not verify the validity thereof.

[15] **Complaint by Mr Ananias Malakoana:**

15.1 On the 31st August 2020 the applicant received a complaint from Mr Ananias Malakoana against the respondent. Mr Malakoana alleged that on 9th December 2016, he instructed the respondent to demand costs from Bara Qwa-Qwa Taxi Association, after the court ruled in his favour for costs to be paid by the Bara Qwa-Qwa Taxi Association.

15.2 Mr Malakoana indicated that he paid an amount of R 57 000.00 in cash to the respondent. He complains that since the respondent received the money, he has failed to perform his mandate and respond to his communication. He states that he has also visited the respondent's office with no success.

15.3 The applicant submits that it addressed a letter to the respondent on 9th September 2020 and recorded the following:

15.3.1 That a complaint has been made against him;

15.3.2 That he should furnish his comments to the allegations before 9th October 2020 as no further extensions will be granted;

15.3.3 That should he not respond, the applicant will have no option but to refer that matter to a disciplinary committee; and

15.3.4 That he is free to resolve the matter with the complainant , but that it should not serve as an interruption of the date of the requested response.

[16] **Complaint by Mr Phillip Mdunge:**

16.1 Mr. Phillip Mdunge lodged a complaint with the LPC on 9th July 2017. Mr Mdunge instructed the respondent to assist him with a property transfer situated Erf 9[...] Tembisa Extension 24 Township on 3rd November 2016.

16.2 The purchase price was R 210 000. 00. Mr Mdunge paid R 160 000.00 and R 9 180.00 into the respondent's trust account. The balance of R 50 000.00 was paid directly to the agent per their agreement. The seller demanded payment of a portion of the purchase price and the respondent subsequently paid R 110 000.00 on 5th November 2016 to the seller.

16.3 The seller failed/refused to give possession of the property to Mr Mdunge in breach of the contract. As a result, Mr Mdunge cancelled the agreement and demanded full payment of R 160 000.00 paid into Respondent's trust account.

16.4 The seller disappeared and couldn't be located. An agreement was reached between the respondent and Mr Mdunge, that he would refund the R160 000.00 to Mr Mdunge on or before July 2017, after which the respondent would seek to recover the money from the seller by instituting a civil claim against him.

16.5 Upon an inspection of trust creditor's ledger of Mr Mdunge for the year ending February 2017, it was noted that an amount of R 160 000.00 was paid into the respondent's trust account and thereafter an amount of R 110 000.00 was paid to the seller. Thereafter, payments amounting to R 36 300.00 were effected during the period 11 November 2016 to 10 December 2017. The payments seem to have been made to the respondent. It was further noted that the balance remaining in the trust creditor's ledger account of Mr Mdunge as at 28 February 2017 was R 13 700.00 instead of R 50 000.00 as expected.

[17] **Complaint by Mr Errol Josia Malope:**

17.1 The respondent was instructed to assist with the transfer of a property. The purchase price was R 250 000.00. The deed of sale was signed on 1st October 2019, and an amount of R 227 000.00 was paid into the respondent's trust account on the same day. The balance was paid to the agents. Mr Malope and the seller agreed that the purchase price be paid to the seller immediately and this was done. Mr Malope took immediate occupation of the property.

17.2 The applicant submits that no evidence was provided to prove that the seller and Mr Malope had agreed to transfer the purchase price immediately to the seller. From the sale agreement Mr Malope had been given the right to occupy the property immediately. Also, no evidence was received on confirmation if the property had been transferred.

17.3 The applicant avers that the respondent contravened the LPC's code of conduct in that he failed to perform professional work of a kind commonly performed by an attorney with such a degree of skill, care or standard as may be reasonably expected.

[18] **Complaint by Mr Moses Makhubo:**

18.1 Mr. Makhubo lodged a complaint with the LPC on 26th February 2020. He stated that he visited the firm on 7th June 2016, seeking assistance with transferring his grandparents' property and the administration of his father's estate. He was told that the matters would be finalised in six months, but after four years, no progress had been made.

18.2 Mr Makhubo stated that he instructed the respondent's firm to assist him and his siblings to reclaim a property that was once occupied by their grandparents and parents during the 80's and the department of Housing had awarded the property to their aunt.

18.3 The respondent denied receiving instructions to reclaim the property from the aunt, however he confirmed that an amount of R 17 000.00 was paid to cover legal costs for consultation, perusal of the historical file pertaining the property, consulting witnesses, drafting High Court application and briefing counsel. The matter was eventually settled, and the settlement agreement was made an order of court on the 6th July 2017. Shortly thereafter they realised that there was an error on the order, and a Variation application was launched to correct the error. The Variation order was granted on the 26th July 2017. He argued that he had properly executed his mandate. Ms Hlogoana, noted that the respondent's argument seems reasonable, however she stated that the respondent did not communicate effectively with his client which resulted in the current misunderstanding.

[19] **Complaint by Mr Floyd Patterson Mathiba:**

19.1 On 20th January 2020, a complaint was received by the LPC from Mr Mathiba. He alleges that in September 2018, he instructed the respondent to handle a property transfer. The buyer of the property paid R 14,000 into the respondent's trust account for transfer fees. He sent a text message on 29th January 2020 to the respondent to request a progress update.

19.2 On 24th February 2020, the respondent addressed a letter to the applicant responding to the allegations leveled against him and responded as follows:

19.2.1 He was given instructions to attend to the registration and transfer of a property sold by Mr Mathiba in his capacity as the executor of the estate of his late parents. The purchasers were Mr and Mrs LB Thebe and the purchase price was R 420 000.00.

19.2.1 He advised Mr Mathiba that the proceeds of the sale have been paid to the beneficiaries of the estate, save for the sum of R 35 000.00.

19.2.3 Mr Mathiba was further advised that there was an outstanding amount of R 78 000.00 owed to Eskom in respect of electricity supply to the property, and the balance of R 35 000.00 should be utelised to settle that account which he refused to pay.

19.2.4 The respondent advised Mr Mathiba that they would hold the money over in the trust account until the Eskom account was fully settled and the buyers were able to open the electricity account in their own name.

19.2.5 On the 10th March 2020 Mr Mathiba responded to the respondent's letter and indicated that he was advised by the respondent that the debt to Eskom had prescribed, despite him advising the respondent that the debt was still active. He stated that he instructed the respondent to pay off the Eskom account which instruction was ignored by the respondent.

19.2.6 Mr Mathiba complained that the respondent delayed the transfer of property by more than a year, and he could have settled the Eskom account with the R35 000.00 after paying the beneficiaries of the estate.

[20] **Complaint by Mr Neo Mngomezulu**

20.1 The applicant received a complaint on 30th April 2021 from Mr Mngomezulu. He stated that on the 22nd February 2021 he entered into a deed of sale for the purchase of a property described as Erf 1[...] Bram Fischerville Extension 9, with a purchase price of R 650 000.00. The transfer costs for the property amounted to R 19 500.00. The purchase price was paid into the respondent's trust account on the same day.

20.2 Mr Mngomezulu later sent emails on 3rd March, and 9th March 2021 to the respondent, requesting the cancellation of the sale agreement on the grounds of misrepresentation of the property, and a refund of the amount paid into the trust account within two working days.

20.3 A meeting was held between the seller and Mr Mngomezulu on the 16th March 2021 regarding the cancellation of the sale agreement. It was agreed that the property would be sold in order to refund Mr Mngomezulu the full purchase price and the transfer costs.

20.4 It was further agreed that a deadline to sell the property would be communicated telephonically however, to date there has been no offers on the property and no communication from the respondent.

20.5 On the 5th May 2021 the applicant addressed a letter to the respondent advising him that a complaint has been made against him and he was requested to furnish his written explanation on/before the 7th June 2021. He was also advised that he was free to resolve the matter with the complainant, but this would not interrupt the deadline for the requested response.

20.6 On the 7th June 2021 the respondent addressed a letter to the applicant responding to the allegations levelled against him, and he stated the following:

20.6.1 He was given instructions to draft a deed of sale and transfer the property into Mr Mngomezulu's company's name, Zulco Homes (Pty) Ltd. The contract was signed on the 22nd February 2021, and the purchase price was paid into his trust account on the same day. Mr Mngomezulu was handed the keys to the property.

20.6.2 On the 3rd March 2021, Mr Mngomezulu sent him an email alleging that the seller and the agents have misrepresented the profit that will be generated on the property on a monthly basis.

20.6.3 The seller and the agents were advised of Mr Mngomezulu's intention to cancel the agreement, and a meeting was held between the parties on the 16th March 2021, wherein the parties agreed to cancel the contract.

20.6.4 The seller and the agent requested time to sell the property and refund Mngomezulu. The dispute arose when the deadline set for selling the property was not honoured due to the seller and agent's failure to find new buyers for the property. He further stated that he does not know how the agent and Mngomezulu met.

20.6.5 The seller and the agent have advised that the property would be sold by the 30th June 2021 and Mr Mngomezulu will be refunded thereafter.

[21] **Complaint by Ms Ntombizodwa Esther Sithole**

21.1 On the 1st June 2021 the applicant received a complaint from Ms Sithole. The complaint is related to an offer to purchase a property situated at 2[...] T[...] Street, Meadowlands. Sithole signed an offer to purchase agreement with Silwayiphi Elphas Majozi, in his capacity as the representative in the estate of the late Nomthi Lena Majozi. The purchase price was R 390 000.00, and the transfer costs were R 11 651.00.

21.2 The purchase price was paid into the respondent's trust account on 29th June 2019. The respondent had undertaken to transfer the property within four months of receiving the purchase price and transfer costs. On 1st July 2019, R 11 651.00 was paid into the Respondent's trust account for transfer costs. The property was never transferred as promised.

21.3 Ms. Sithole has attempted to finalise the matter by calling and visiting the respondent's office, but the respondent consistently ignores her. She stated that she is receiving threats from different people who claim to have bought the house, and she wants to be refunded so she can move out of the house.

21.4 On 13th August 2021, the respondent sent a letter to the applicant denying allegations of failing to account for the money, respond to communications as well as failure to properly deal with the instructions.

21.5 He stated that the complainant, together with the agents and the seller requested him to assist with the transfer of the property into the complainant’s name. The offer to purchase had already been drafted by the parties with the assistance of the agents.

21.6 The purchase price was paid into his trust account and immediately thereafter the complainant requested him to pay the money over to the seller, as she wanted immediate occupation of the house. The seller also demanded to be paid before he could give occupation of the property to the complainant.

21.7 The respondent complied with the instructions and paid the purchase price to the seller and the complainant took occupation of the property without paying occupational rental to the seller.

21.8 The parties were called to the respondent's office and the seller advised that the property was registered to a person who fraudulently bought the property. The respondent was instructed to launch an application in the High Court to cancel the agreement of sale entered into between Bokie Stephen Mabena and Irene Manyooni for the same property, and thereafter to transfer the property to the complainant.

21.9 The respondent drafted the necessary documents, issued and served the relevant parties. He also briefed the seller and the complainant on the progress of the application. The cause of the delay in finalising the application is due to the fact that there are huge backlogs in the Gauteng Local Division with allocations of hearing dates.

21.10 The respondent stated that if the complainant wishes to cancel the agreement, she should advise his office, and he would inform the seller of her wishes.

[22] The applicant served a supplementary affidavit on the 11th January 2024 wherein further 16 complaints received against the respondent were stated in order to appraise the court with all the facts to justify either the suspension or striking of the respondent from the roll of practicing attorneys.

[23] **Complaint by Mr Justice Koole**

23.1 On 21st April 2021 Mr Justice Koole filed a complaint with the applicant against the respondent. On 15th December 2021 Mr Koole sought the respondent's assistance regarding the collection of monies owed to him by the seller. A contract was signed wherein the Seller agreed to pay Mr Koole back an amount of R 20 000.00 by the 18th December 2021. An amount of R 12 000.00 would be paid by 28th February 2022 and the remaining balance by 31st March 2023.

23.2 Mr Koole stated that the respondent paid back an amount of R 7 500.00 which he had paid for transfer fees. He was also paid an amount of R 4 000.00. The total amount received from the respondent is R 11 500.00 and an amount of R 8 500.00 is still outstanding.

23.3 On the 29th August 2022 the respondent provided comments to the complaint and stated as follows:

23.3.1 Mr Koole who was the buyer of a property described as Erf 4[...] Vlakfontein Extension 1 from the seller, Mr Paul Matlhare, came to his office and requested that he be assisted with the cancellation of a deed of sale he entered into on the 28th November 2020. According to the deed of sale the purchase price was to be paid directly to the seller and Mr Koole had done so. The respondent stated that the deed of cancellation was drafted after consulting with both the seller and the buyer and it was signed on the 15th December 2021.

23.3.2 Another amount was to be paid into the account of Mr Simon Ramulifho, to assist them with the eviction of the occupiers of the property. An amount of R 12 500 was deposited into Mr Ramulifho's account.

23.3.3 The respondent's firm had already commenced with the process of evicting the occupier of the property and assisting them with the process of obtaining the necessary documents for the registration of the property into the buyer's name when the deed of sale was cancelled.

23.3.4 The money which was paid to Mr Ramulifho to assist with the eviction process was refunded in full to the seller and he attached the proof of payment in the amount of R 12 500.00.

23.3.5 The respondent was never instructed to pursue the matter further and he was not paid to institute action against the seller in the event of him breaching the terms and conditions of the deed of cancellation.

23.3.6 The respondent contends that despite the steps taken by his firm and the numerous meetings which they have facilitated between the parties, was not paid for their services, and they have also advised the parties not to pay them as the contract was cancelled.

[24] **Complaint by Mr Neo Mngomezulu**

24.1 This complaint is exactly the same as the one stated above in paragraph 20.

24.2 On the 17th February 2022, the applicant advised the respondent that the matter was considered by an investigating committee, and it was decided that the parties should attend a meeting for a discussion of the complaint in terms of Rule 40 of the Rules of the LPC.

[25] **Complaint by Ms Ntombizodwa Esther Sithole**

25.1 This complaint is the same as the one stated above in paragraph 21.

25.2 The difference here is that the applicant submits that the respondent failed to account for this complaint when the applicant informed him about it on the 1st July 2021. A subsequent letter was sent to the respondent dated the 4th October 2021 and again no response was received. As a result, this matter was escalated to the Investigating Committee for further consideration.

[26] **Complaint by Josephine Zondile Nkosi**

26.1 On the 17th May 2022 Ms Nkosi lodged a complaint against the respondent. She stated that in 2019, she sought the respondent's help with a property transfer. The work was delayed and only carried out late in 2021 after having to make several requests for progress on the transaction.

26.2 An agreement was reached that she would pay a certain amount of money in order to transfer the property, as the firm had no funds. She paid the respondent the requested money, even though she had initially paid everything in full. She further stated that she only paid the additional money because the respondent provided an undertaking to reimburse her afterwards. The respondent has not refunded her the extra money.

26.3 The applicant advised the respondent that a complaint has been lodged against him and requested a written explanation by the 28th June 2022. The respondent provided his response on the 29th July 2022 and stated as follows:

26.3.1 There was some misunderstanding between Ms Nkosi and the firm regarding the total fees to be paid for their costs in the matter.

26.3.2 The parties have since resolved their dispute and Ms Nkosi was repaid an amount of R13 500.00 which was the cause of the dispute.

[27] **Complaint by Mr Charles Chilongo**

27.1 On the 6th June 2022, Mr Chilongo lodged a complaint with the applicant. The complaint stems from a property he purchased on 30th January 2021, for R 240 000.00, for which he never received the keys. On the 23rd June 2022, the applicant requested a written explanation from the respondent.

27.2 The respondent provided his response on the 7th September 2022. He stated that his office assisted Mr Chilongo and the Seller with the transfer of a property described as Erf 1[...] Lehae House, and the property was successfully registered in Mr Chilongo's name.

27.3 The respondent's instruction was strictly to assist with the property registration. The issue of the keys to the property is not within the respondent's mandate and is a matter between Mr Chilongo, the seller and the agent as the respondent was not involved in the sale of the property.

27.4 The Respondent has advised Mr Chilongo that the issue of the property keys is a matter between him and the Seller. He further stated that the seller instructed him to apply for the eviction of the unlawful occupiers from the property and he is currently proceeding with the application for eviction.

27.5 On the 12th October Mr Chilongo responded to the respondent's explanation as follows:

27.5.1 He is surprised by the respondent's response. The stated that the respondent promised to go with him to the property once the seller's brother has vacated the property. Now he has changed the story.

27.5.2 He also stated that he picked up from the attached documents that it shows that on the 16th March 2022 he went and signed in front of a Commissioner of Oaths by the name of Thinyadzo Matimba. However, he was not in Johannesburg on that day, and the signature is not his. His signature was forged.

27.5.3 On 21st August 2022, another property agent by the name of Nhlanhla was brought to his home. It was not the first time that he met this lady, as she was also involved in showing him the property the first time before he bought it. The respondent brought some documents for him to sign and told him that seeing that it is taking too long to evict the person staying in the house, Nhanhla has another potential buyer for the property and that it is better to sell it so he could get his money back. The respondent even asked him if he wants more money, he said he just wants the initial amount he paid.

27.5.4 On the same day the respondent advised him and his wife that he had received an email from the applicant. The respondent has not come back to him since that day.

[28] **Complaint by Ms Siphelele Vilakazi**

28.1 Ms Vilakazi lodged a complaint with the Legal Practice Council on 4th July 2022 against the respondent. She stated that she sought assistance from the respondent on the 30th July 2022 for a conveyancing matter to transfer a property into her name.

28.2 Ms Vilakazi paid an amount of R 190 000.00 to the respondent, inclusive of the full purchase price and transfer costs. During November 2021,she was approached by a Xaba family, claiming they also had a part in the property, which was news to her.

28.3 She advised the respondent she wasn't interested in buying the property anymore and asked for a refund. The respondent promised to refund her by 28th December 2021 but failed to do so.

28.4 The applicant advised the respondent of the complaint on the 7th September 2023, and the respondent responded as follows:

28.4.1 Ms Vilakazi came to his office with the seller of the property, Mr Jeffery Majoro, and requested him to assist them with the process of transferring the property. The agreed purchase price was R 190 000.00. The purchase price was deposited into his trust account on the 30th July 2021

28.4.2 The property was registered in the names of Mr Majoro and Nompumelelo Christinah Xaba who had since passed away. The respondent states that he assisted Mr Majoro to obtain a letter of Authority from the Master of the High Court in order for him to transfer the property to Ms Vilakazi.

28.4.3 The respondent also stated that the parties further agreed that pending finalization of the registration process, the money, which was paid into the trust account, would be paid to the seller in order to enable the seller to give occupation of the house to the buyer.

28.4.4 The respondent states that he advised the parties of the consequences of their decision, which they both said they truly understood. An amount of R 100 000.00 was paid to Mr Majoro and the keys to the property were handed to Ms Vilakazi.

28.4.5 After Ms Vilakazi took occupation of the property, she advised the respondent that there is a Xaba family claiming ownership of the property by virtue of the fact that the late Ms Xaba was a registered owner of the property. The respondent contacted Mr Majoro of the situation and Mr Majoro advised that he has reached an agreement with the Xaba family, he requested him to pay the remaining R 50 000.00 to the Xaba family.

28.4.6 Ms Vilakazi then advised the respondent that she was no longer interested in the property and requested a refund of the purchase price. A meeting was held between Mr Majoro and the

Xaba family where it was agreed that the property be sold to enable them to refund Ms Vilakazi. Ms Vilakazi was advised of the agreement and the respondent indicated that he is assisting the parties in the process of reselling the property. There were potential buyers and there was hope that the sale could be concluded by the 15th September 2022 and Ms Vilakazi was advised of this on the 26th August 2022.

28.4.7 On the 9th January 2023 the respondent advised the applicant that the matter has been resolved and attached a copy of the deed of sale signed by Ms Vilakazi and the new buyer and proof of payment.

28.4.8 On the 27th March 2023 Ms Vilakazi responded to the respondent's letter as follows:

28.4.8.1 She indicated that she was supposed to be paid R 190 000.00 but only received R 180 000.00.

28.4.8.2 She would like to be assisted to get the remaining R 10 000.00.

[29] **Complaint by Mr Mkhacani Dumisani Mathebula**

29.1 Mathebula filed a complaint with the Legal Practice Council on 2nd September 2022. The complaint stems from a conveyancing matter dating back to 8th December 2021, where Mathebula instructed the respondent to assist with a property sale and transfer of a property.

29.2 The respondent has failed to pay Mr Mathebula an outstanding balance of R 55 000.00 and is unresponsive to communication.

29.3 The respondent, on 9 January 2023, informed the LPC that the complaint has been resolved and proof of payment of an amount of R 50 000.00 has been attached.

[30] **Complaint by Charles Thula Kubeko**

30.1 Mr Charles Thula Kubeko lodged a complaint with the LPC on the 12th September 2022. He stated that on the 8th August 2022 he sought the assistance of the respondent, to assist in obtaining a letter of executorship for his mother's estate. He paid an amount of R 4 500.00, and he is still waiting for the respondent to furnish him with the papers.

30.2 On the 31st January 2023, the applicant advised the respondent that a complaint has been lodged against him and requested his written explanation by the 28th February 2023.

30.3 The respondent stated that Mr Kubeko, visited his firm seeking assistance with the application for appointment as the executor of an estate. There were some delays in the process of obtaining the letter of executorship and eventually he succeeded in obtaining the letter of executorship.

30.4 The respondent further stated that the dispute with the complainant has been resolved and a letter from Mr Kubeko withdrawing the complaint was attached to his response.

[31] **Complaint by Ms Letile Raesibe Mashabela**

31.1 Ms Mashabela lodged a complaint against the respondent on the 19th September 2022. She stated that she had sought the assistance of the respondent on the 17th November 2021 regarding a conveyancing matter. She instructed the respondent to assist her in the purchase and transfer of a property.

31.2 The respondent failed to transfer the property and the last communication with the respondent was when he paid her an amount of R 6 000.00 for rent.

31.3 The applicant advised the respondent that a complaint was lodged against him and requested a written explanation by the 23rd March 2023.

[32] **Complaint by Mr Bongane Goodwill Mlotshwa**

32.1 Mr Mlotshwa lodged a complaint on 19th December 2022, through Deloitte Tip-offs Anonymous against the respondent regarding a conveyancing matter.

32.2 He stated that on 28th June 2021, he sold an RDP house for R 180 000.00. The buyer, Mr Msomi Nhlanhla, suggested that they use the services of his attorney, Mr KS Ramulifha, employed at HR Munyai Attorneys. The attorney assisted them with the drafting of the deed of sale and the signing thereof.

32.3 Mr Ramulifha advised that he charges R 5 700.00 for administration, R 6 000.00 for replacement of the title deed and R 2 800.00 for the water clearance certificate. Mr Nhlanhla agreed to pay R 14 500.00 to the firm, and for this amount to be deducted from the total sale price of the house. He paid a deposit of R 20 000.00, and it was agreed that the balance will be paid within 14 days, failing which the agreement will be dissolved. Mr Mlotshwa advised Mr Ramulifha that his cousin was occupying the house and would need 3 months' notice to vacate.

32.4 Mr Nhlanhla paid the following amounts into the account number of Mr Ramulifho, 6[...], held at First National Bank:

32.4.1 R 33 000.00 on 27th August 2021;

32.4.2 R 50 000.00 on 11th September 2021;

32.4.3 R 20 000.00 on 3rd February 2022

32.4.4 R 25 000.00 on 29th November 2022, as well as a cash payment of R 5 000.00.

32.5 On the 5th January 2023 the applicant referred the complaint to the respondent and requested his written explanation by the 20th January 2023. On the 8th March 2023 the respondent responded as follows:

32.5.1 His office was approached by the buyer and the complainant to assist them with the drafting of a deed of sale, which was done.

32.5.2 The parties have already agreed that the purchase price will be paid directly to the seller. No amount of money was paid into the respondent's trust account.

32.5.3 The dispute between the parties arose when the complainant delayed giving the buyer occupation of the property. The buyer deducted an amount of R 11 844.20 from the purchase price and paid it to the Municipality due to the complainant's delay in giving him occupation of the property.

32.5.4 The parties have since resolved their dispute, and the complainant will furnish the applicant with a withdrawal statement.

[33] **Complaint by Spence Attorneys on behalf of Mr Molefi Mashitiso**

33.1 Spence Attorneys lodged a complaint with the LPC on behalf Mr Mashitiso on the 16th February 2023. The complaint stems from a conveyancing matter from 3rd May 2021, where Mr Mashitiso instructed the respondent to assist in transferring a property from the Estate of the late NA Mahlangu into his name. Mr Mashitiso made a payment of R

271 553.00 for deposit and transfer costs into a personal banking account of a firm employee, Mr. Gondo Ramulitho.

33.2 An investigation by Spence Attorneys revealed that the registration of the property has not occurred and that the respondent's firm does not have a registered conveyancer.

33.3 On 27th September 2022, Spence Attorneys sent an email to the respondent with several questions that were not answered. The email inquired about the location of approximately R 260 000.00, which was held on behalf of the Seller. It also asked for an explanation as to why the conveyancer requested the funds be paid into a personal bank account, given that the property transfer had not taken place and an executor had not yet been appointed for the estate. The property is not "registerable" yet because the deed of grant hasn't been issued, Questions remain about the deceased estate, has it been reported, and to which Master? Have letters of authority/executorship been issued? Has the Human Settlements department taken steps to issue the deed of grant?

33.4 On 22 November 2022, the Respondent replied to a subsequent letter from Spence Attorneys, stating the purchase price had been paid to the seller, but failed to answer the other questions.

33.5 The principal concern is that the respondent, as an attorney, is well aware that any deed of sale entered into on behalf the seller of a deceased estate, would be *void ab initio,* alternatively voidable/unenforceable in the absence of a letter of authority/executorship issued by the Master. In the circumstances, the premature payment of the purchase price to the seller is inappropriate and highly irregular.

33.6 In terms of the transfer costs, Spence Attorneys still await confirmation that the funds are still held in trust by the respondent, pending the transfer which has not yet taken place.

[34] On the 1st September 2023 the respondent responded to the applicant as follows:

34.1 The Seller and Buyer met and have an agreed that the property cannot be registered yet as they are awaiting the issuing of the Title Deed by the Department of Housing.

34.2 The Seller acknowledged that she has received the full purchase price and will facilitate the property transfer  into the buyer’s name once the Title Deed is received from the Department of Housing.

34.3 In response to queries from Spence Attorneys, the respondent explained that the Seller needed immediate money for her mother's funeral costs and suggested the money be paid to a third party to allow her quick access. She guaranteed that the buyer will obtain immediate occupation of the property once she receives the money.

34.4 The Purchaser agreed to this proposal and signed the deed of sale.

34.5 The money which was paid to Mr Ramulifho’s account was subsequently paid to the Seller and other parties involved in the transaction, with receipts attached to the letter from the respondent.

34.6 The buyer has since erected rooms on the property and is collecting rental income, and the Seller has provided undisturbed occupation.

[35] **Complaint by Ms Patricia Kamanga**

35.1 Ms Kamanga lodged a complaint with the LPC on the 5th July 2023. She stated that on the 28th June 2021 she sought the assistance of the respondent to transfer a property in her name and provide her with a title deed for her house. She complained that since 2022 she has been advised that they are busy with the title deed at the deeds office and she is currently not aware of the latest developments.

35.2 She requested the respondent to assist in changing the title deed to her name only, since she had a joint bond with her former spouse and she further indicated that she was paying the bond alone until their separation.

35.3 The attorney who dealt with her matter at the respondent's firm was Mr Ambani Muliwa. He advised her that she must pay an amount of R 35 000.00 for the whole procedure. She was then advised that she owed monies to the Municipality for electricity and was required to pay another amount of R 55 000.00 so that they can get someone from the municipality to reduce the amount owing and then she can then pay the reduced amount to the municipality on her own.

35.4 Mr Muliwa had said that he was busy with the letter of authority and paying the electricity first so she can get her title deed. He had promised that it would be done in 2022. When she went to him in December 2022, he said that he has not found a person to assist him with the electricity bill, and that the person who was assisting them had moved to another department.

35.5 The firm also advised her that they were waiting for FNB (the bank at which the mortgage bond was held), and the deeds office. She ended up telling Mr Muliwa to refund her money because it seemed like there was no progress since 2021.

35.6 On the 12 July 2023 the applicant advised the respondent that there was a complaint lodged against him and requested his explanation by 14th August 2023.

[36] **Complaint by Ms Lindela Mnyipika**

36.1 Ms Mnyipika lodged a complaint with the LPC on the 22nd September 2023. The complaint stems from a property transfer instruction given on the 10th December 2018 by a property agent Mr Arnold Kwenda, where Mr Ramulifho was to transfer a property to Mr BS Simango.

36.2 Mr Simango paid an amount of R 200 000.00, of which amount Ms Mnyipika received R 70 000.00 and Kwenda (the agent) received an amount of R 30 000.00.

36.3 After the firm being quiet for some time, Ms Mnyipika asked Mr Ramulifho what was happening about the property transfer, after which she was summoned to the respondent’s office. At the meeting held on the 6th November 2021, a binding contract was drafted stating that the firm would pay an amount of R 10 000.00 monthly until the R 60 000.00 is paid in full. Ms Mnyipika has only been paid R 30 650. 00 with the last payment being on the 1st April 2023 and has not received any further feedback or response from the respondent's offices.

[37] **Complaint by Mr Mxolisi Popo Tetyana**

37.1 Mr Mxolisi Popo Tetyana lodged a complaint with the LPC on the 27th September 2023. The complaint relates to a property transaction that was finalised on 13 April 2023, and the monies were paid into the trust account of the respondent on the 14th April 2023. Mr Tetyana states that he attended at the offices of the respondent together with the agent on the 13th April 2023.

37.2 The property was sold for R 150 000.00, of which for R 30 000.00 was for transfer fees and R 20 000.00 was transferred to the agent. Mr Tetyana was paid an amount of R 64 000.00. and the balance of R 30 000.00 was withheld for rates and taxes.

37.3 Mr Tetyana asked the attorney under which municipal district did the property fall, and he was asked to return in a month to get the outstanding monies. When he checked with the attorney as agreed, he was told that they have been applying with the City of Johannesburg, whereas he had previously told them it was a different municipality.

37.4 Mr Tetyana took it upon himself to investigate during August 2023 and found that the rates were R 2 000.00. The firm paid him R 10 000.00 leaving an amount of R 18 000.00 still outstanding.

37.5 The applicant advised the respondent of the complaint on the 26th October 2023 and received a response on the 7th November 2023 as follows:

37.5.1 He has perused the complaint and advised that his office is not involved in this matter.

37.5.2 It seems as if someone has used his firm's name without his authorisation and consent.

37.5.3 He has contacted Tetyana and advised him to lay a criminal charge against the people that he was dealing with.

[38] **Complaint by Mr Vernon Nkonwana**

38.1 Mr Nkonwana lodged a complaint with the LPC on the 2nd November 2023. On the 12th January 2023 he signed a transfer of property and paid an amount of R 400 000.00 to the respondent.

38.2 He later discovered the sellers had no authority to sell the property, and the property could not be registered in his name, he signed a deed of cancellation. He received a refund of R 200 000.00 on the 7th July 2023 and another R 50 000.00 on 10 September 2023, after a letter of demand was sent to the respondent. An amount of R 150 000.00 plus interest remains outstanding.

38.3 Mr Nkonwana acquired the services of Mathye KQ Attorneys, who sent a courtesy letter as well as a letter of demand to the respondent, however no further payments were received.

[39] **Complaint by Ms Boitumelo Kgaswane**

39.1 Ms Kgaswane filed a complaint with the LPC on the 8th November 2023. She stated that on the 26th September 2023 she instructed the respondent to refund her monies as the respondent's firm had failed to transfer the property to her.

39.2 She had paid the firm an amount of R 160 000.00 which amount was paid to the seller's agent, however it has come to her attention that the seller has not yet received the money.

[40] The applicant further sought the leave of the court to file a second supplementary founding affidavit which was granted by the court on the 13th February 2025. The applicant submitted that the further additional facts are relevant to illustrate not only the respondent's ongoing disregard for his duties as an attorney and officer of the court but should also be taken into consideration by the court in adjudicating the matter.

[41] The applicant further submitted that the respondent had filed a supplementary affidavit on the 25th November 2021 with annexures, which annexures included new evidence which was previously not in its possession. The evidence had to be considered and verified by its accountant and a further investigation be conducted.

[42] The applicant submits that the additional facts it brings forthwith constitutes such a deviation from the standards of professional conduct that the respondent is not a fit and proper person to continue to practice as an attorney and

which justify the Court in ordering that the name of the respondent be removed from the roll of attorneys/legal practitioners.

[43] The applicant avers that upon receiving the respondent's accounting records it had to conduct further investigations. It instructed Mr Deleeuw Swart , an independent chartered accountant to conduct an investigation of the respondent's accounting records and practice affairs.

[44] On the 6th and 11th July 2023 Mr Swart attempted to contact the respondent's firm to no avail. He made a research and established that the respondent was operating two cellular numbers being 0[...] and 0[...]2 and managed to arrange to meet at the respondent's firm on the 25th July 2023. On the day he explained to the respondent that he has been appointed to conduct an inspection of the accounting records of the firm and submit a report to the applicant.

[45] He requested the respondent to furnish him with the firm's accounting records for the years ended from 28 February 2020 to 28 February 2023 and also for the period up to 31st July 2023. He also requested the respondent to prepare for him all the firm's documents on how the firm resolved the complaints against the firm that the applicant received.

[46] The respondent agreed to obtain all the documents that Mr Swart requested for his inspection. He also informed Mr Swart that the last Fidelity Fund Certificate the firm received was for the year 2022 and undertook to inform Mr Swart as soon as all the records requested are available for inspection, which he never did.

[47] Mr Swart attempted to make contact with respondent on the following dates to no avail: 15th August 2023, 5th September 2023, 12th and 20th September 2023, 2nd and 13th October 2023 and the 17th October 2023.

[48] Mr Swart was not able to meet with the respondent to inspect the firm's accounting records and the complaints recorded by the applicant against him.

He had no option but to complete the report without the respondent's input or assistance of the firm.

[49] He inspected the trust accounting records for the year ended 29th February 2020. He requested the applicant to obtain copies of the firm's trust banking statements from the firm's bankers for the period March 2019 to February 2020. He received these banking statements from the applicant which covered the period from 8 February 2019 to March 2020. The inspection of comparing the firm's trust accounting records, with the trust bank statements received from the applicant, revealed that the receipts and payments recorded in the two documents were in all material aspects in agreement. Mr Swart formed a view that the firm's accounting records for the year ended 29 February 2020 is a fair reflection of the firm's trust transactions and trust balances for the year ended 29 February 2020.

[50] Mr Swart further noted that there were no monthly lists of trust balances available and there was no record that such lists were balanced on a monthly basis with the trust banking account of the firm.

[51] Mr Swart inspected the trust position of the firm's trust accounting records in the following manner:

51.1 He extracted lists of trust creditors' balances from the trust accounting records of the firm and decided to select the balances on the following dates 28 February 2019, 31 August 2019 and 29 February 2020. The trust banking balances of these three dates as per the firm's trust banking statements were as follows:

51.1.1 On 28 February 2019 - R 1 472 010.00
51.1.2 On 31 August 2019 - R 840 044.00
51.1.3 On 29 February 2020 - R 364 734.00.

[52] The trust positions on the three dates were calculated as follows:

| | 28/02/2019 | 31/08/2019 | 29/02/2020 |
|---|---|---|---|
| Total trust creditors | 1 500 674.42 | 868 495.96 | 396 130.55 |
| Less trust bank balances | 1 472 010.00 | 840 044.00 | 364 734.00 |
| **Trust Shortage** | **28 664.40** | **28 451.96** | **31 395.61** |

[53] Mr Swart's report indicates that the firm's Attorney Annual Statement on Trust Accounts for the same dates however reflects the trust position as follows:

| | 28/02/2019 | 31/08/2019 | 29/02/2020 |
|---|---|---|---|
| Total trust creditors | 1 472 010.00 | 840 044.00 | 364 734.00 |
| Less trust bank balances | 1 472 010.00 | 840 044.00 | 364 734.00 |
| **Trust Shortage** | **Nil** | **Nil** | **Nil** |

[54] It was noted that the only possible inference for the above differences in the balances of the trust creditors could be that the firm removed or added trust creditors' balances on the creditors' lists on the three dates. These adjustments were not recorded in the trust accounting records of the firm and therefore make no sense.

[55] Mr Swart further noted that one of the causes of the trust shortages was the fact that the trust banking charges of the firm exceeds the values of the trust banking interest. This is clear from the summaries of the trust banking charges and trust banking interest recorded on the bank statements. Attorneys and their firms are made aware of this danger on various forums and should be well aware of this problem. The firm did not identify these trust shortages due to a lack of internal controls as required by Rule 54.14.7 of the LPC Rules.

[56] The applicants submits that for purposes of appraising the Court with all the facts which justify the removal of the respondent's name from the roll of legal practitioners, it brings forward additional complaints brought against the respondent.

[57] **Complaint by Ms Puleng Agness Lehare**

57.1 Ms Lehare lodged a complaint with the LPC on the 5th December 2023. During August 2022 she instructed the respondent's firm for assistance to change the names on the letters of authority to enable her to sell the house, which instruction was executed by the firm, and the property was sold.

57.2 The firm paid two agents and made a payment to someone to have the tenant evicted.

57.3 From a purchase price of R 570 000.00 she was only paid an amount of R 210 000.00, and also that the buyer had not paid occupational rent since June 2022.

[58] **Complaint by Ms Shumani Margaret Makuvhile**

58.1 On 17th January 2024 Ms Makuvhile lodged a complaint with the LPC. The complaint is related to the transfer of Erf 2[...], K[...] Street, Chiawelo, Soweto which was completed on 19 December 2023.

58.2 The Respondent failed to pay the money owed to the Seller, despite promising to do so in the first week of January 2024. When Makuvhile contacted the firm in the first week of January 2024, she was informed that the Respondent was on holiday and that payment would be made in the second week of January 2024.

58.3 The respondent failed to meet the payment deadline of 15 January 2024. He has blocked all communication with Ms Makuvhile.

[59] **Complaint by Ms Ciarabell Ntombenhle Ndlozi**

59.1 Ms Ndlozi lodged a complaint with the LPC on the 26th February 2024. She sought assistance from the respondent's firm for a property transfer and was helped by Mr Ambi Mullwa.

59.2 She sold a house in June 2023 and is having difficulty getting her money back. Mr Mullwa advised her that he will keep R 30 000.00 in trust, and she will receive it back in January 2024. She contacted Mr Mullwa on 5th January 2024 and he promised that payment will be made by the end of January 2024, which was not done.

59.3 She contacted Mr Mullwa again on 2nd February 2024 and he promised that payment will be made later that day, which was not done. When she contacted him on the 5th February 2024, Mr Mullwa advised her that his principal arrived late on the 2nd February 2024, however payment will be made around 16:00 on the same day, which was not done.

[60] **Complaint by Ms Patricia Kamanga**

60.1 This complaint is dealt with in paragraph 35 above. The respondent provided the applicant with a response to their letter dated 12th July 2023 on the 7th March 2024 as follows:

60.1.1 The respondent states that Ms Kamanga instructed his firm to report a deceased estate in order to change the property which was previously registered in her name and the deceased's name.

60.1.2 The firm discovered that Ms Kamanga was not legally married to the deceased and therefore could not apply for a Letter of Executorship. The delay in the matter is due to the firm's struggle to find a relative of the deceased who could apply for the Letter of Executorship. Kamanga was informed of this situation.

60.1.3 The cause of delay in property transfer was because the seller, Ms Kamanga, could not afford the clearance certificate fees. To address this, she was advised to apply for a reduction of the amount through a specific process, which involves an application under a section of municipal bylaws, likely Section 118(1)(b).

[61] **Complaint by Mr Vernon Nkonwana**

61.1 This complaint is dealt with in paragraph 38 above. The respondent provided the applicant with a response to their letter dated 8th November 2023 on the 7th March 2024 as follows:

61.1.1 The respondent denies failing to respond to communications from Nkonwana and their attorney. The respondent claims stated that he had several telephonic conversations with Mr Nkonwana and his attorney.

61.1.2 Mr Nkonwana came to the firm to sign a Deed of Sale for a property from a deceased estate, which the firm was assisting with. Nkonwana was advised that the property was still owned by the deceased persons.

61.1.3 Mr Nkonwana was also advised that part of the purchase price will be paid to the seller as deposit pending the finalisation of the registration of the property.

61.1.4 Whilst the firm was busy with the process of winding up the deceased estate in order to enable the property to be registered into Mr Nkonwana's name, they realised that there were some family members who were disputing the seller's rights to sell the property. They advised Mr Nkonwana about the dispute and about the steps they are taking to resolve the matter.

61.1.5 Mr Nkonwana then decided to cancel the agreement and requested a refund of the full purchase price. He was advised that since part of the purchase price was already paid to the seller, they requested time to claim the money paid to the seller and refund the full amount.

61.1.6 At no stage did they refuse to refund the full purchase price. The delay in refunding the amount of R 150 000.00 plus interest, was due to the fact that they are still claiming the money from the seller.

[62] On the 12th March 2024, Mr Nkonwana sent an email to the applicant and advised that he received a call from the respondent trying to negotiate a payment, however he told the respondent that he has no faith in the proposal due to multiple previous failures to pay. He further stated that the respondent furnished him with a settlement agreement which he did not sign.

[63] On the 18th March 2024, Mr Nkonwana sent a response to the respondent's letter dated the 7th March 2024 and stated as follows:

63.1 It is unprofessional of the respondent to take 121 days to respond, which is a vivid indication of how he treats his clients.

63.2 At no point did they ever discuss his money being handed over to the seller, who is a stranger to him. He could never agree to such a high risk of his money.

63.3 He had unsuccessfully tried to contact the respondent on the following dates:

63.3.1 SMS messages on 23rd June and 19th July 2023;
63.3.2 Emails 4th July and 8th August 2023;
63.3.3 Letters from his attorney to the respondent on 15th September and 12th October 2023.

63.4 He was only made aware that his monies were paid to the seller on 29th January 2024 by the respondent when he called him to try and negotiate.

[64] **Complaint by Mr Errol Josia Malope**

64.1 This complaint was dealt with in paragraph 17 above.

64.2 On the 7th March 2024 Mr Malope informed the LPC that he is withdrawing the complaint against the respondent as he was refunded in full.

[65] **Complaint by Ms Tebogo Salminah Moila**

65.1 Ms Moila lodged a complaint with the LPC on 12th March 2024 against the Respondent.

65.2 She stated that the respondent failed to lodge the transfer of a property (a cash deal) for 9 months since 17th June 2023, after being given a power of attorney to pass transfer, despite being in possession of the full purchase price which was held in the firm's trust account.

[66] The applicant sought the leave of the court to file a third supplementary affidavit detailing further complaints against the respondent and the court exercised its discretion and granted the leave sought. The applicant submits that the additional facts are relevant to illustrate the respondent's ongoing disregard for his duties as an attorney and an officer of the court and should be taken into consideration by the court in imposing a sanction if the respondent is found to guilty of unprofessional conduct.

[67] The additional complaints that the applicant sought to bring before the court are summarised below.

[68] **Complaint by Mr Mluleki Mbusi**

68.1 Mr Mbusi lodged a complaint with the LPC on the 7th March 2024. He stated that on the 28th October 2023 he sought assistance from the respondent to purchase a property and have it transferred into his name. He was assisted by Mr Chris Mathebula, who worked with an unregistered estate agent and indicated he would not include the agent in the contract to avoid paying tax. Mr Mathebula proceeded with the sale of a deceased person's property without a letter of executorship and openly stated he would bribe court officials to obtain the necessary letter.

68.2 The purchase price was R 170 000.00, and the transfer costs were R 12 800.00. Mr Mathebula suggested that the whole amount be paid immediately to the sellers to secure the property because it can be bought by other people if payment is delayed. He agreed to make the payment and Mr Mathebula provided his personal bank details.

68.3 Mr Mbusi enquired why he was not paying the purchase price into the firm’s trust bank account and Mr Mathebula advised him that it was going to take a long time and further delay the process. He was further advised by Mr Mathebula that he was not going to mention the agent in the contract because he will be required to pay tax.

68.4 Mr Mbusi went to view the property and came across a group of people who said they were related to the deceased who indicated that the sale of the property could not proceed without them, among the people there was the brother and sister of the deceased.

68.5 In a second meeting held with Mr Mathebula, and the three wives of the deceased, the brother and sister of the deceased as well as Mr

Mbusi, it was agreed that the purchase price will be shared amongst themselves. Mr Mbusi states that he noticed that there was a further wife of the deceased who was not in the meeting and advised Mr Mathebula that he does not want to proceed anymore with the transaction. Mr Mathebula advised him not to worry as the family does not know that person.

68.6 Mr Mathebula advised him and the family members present that he is going to pay the purchase price to the family and he will keep R 30 00.00, to resolve the issue of marriage and the letter of authority. Mr Mbusi insisted that the process must be stopped, however Mr Mathebula advised him that the money has already been paid to the family members. The family members also indicated that they no longer have the money and Mr Mathebula suggested to the agent that the property be resold and then he will refund Mr Mbusi.

68.7 The respondent acknowledged that the process was flawed and promised a refund but failed to keep his promise and stopped all communication with him. Mr Mbusi also spoke to the respondent's partner, a certain Mr Ambani, who assured that they will refund him as they were expecting money from the Road Accident Fund.

68.8 On the 29th April 2024, the respondent provided his response and stated as follows:

68.8.1 He does not have any record of the matter in his office;

68.8.2 He has never met the complainant in the matter;

68.8.3 He did not authorize anybody to use his firm's name;

68.8.4 He is currently investigating the circumstances which led to his firm's name being dragged into the matter without his knowledge and consent with a view to take further steps against the person involved.

[69] **Complaint by Mr Happy Msomi**

69.1 Mr Msomi lodged a complaint with the LPC on the 20th May 2024 against the respondent. He stated that on 7th November 2023, he sought assistance from the respondent's firm to purchase an immovable property for R 515 000.00. The respondent did not pay the purchase price to the seller but instead paid R 20 000.00 to an agent.

69.2 The respondent has not kept his promises to refund the monies, after advising that he indeed used same.

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[70] **Complaint by Mr Makgale John Phaswana**

70.1 Mr Phaswana lodged a complaint with the LPC on the 31st May 2024 against the respondent. He stated that during June 2023 he sought the assistance of the respondent's firm with the transfer and registration of an immovable property. He made a payment of R 775 854.50 to the respondent.

70.2 The respondent has not provided any updates on the matter and does not respond to Mr Phaswana's request for updates.

[71] **Complaint by Ms Lena Nhlapo**

71.1 Ms Nhlapo lodged a complaint with the LPC on 24th June 2024 against the respondent. She stated that on the 27th November 2020 she had discussed a change of ownership with the respondent. She alleges that the respondent knew the agent was not legally registered and that the house was attached when selling it to her.

71.2 She was told to transfer the monies to the owner without them holding the monies in the trust account first, until everything was done, including the title deed.

[72] **Complaint by Ms Micaela Benjamin**

72.1 Ms Benjamin lodged a complaint with the LPC on the 25th June 2024 against the respondent.

72.2 She complains that the respondent is acting on behalf of clients without his firm being registered with the applicant;

72.3 The respondent has corresponded with Ms Benjamin's office on behalf of his client, as well as opposed and instituted actions on their behalf, in the following matters:

| | | |
|---|---|---|
| 72.3.1 | Randburg Regional Court | GPRANRC 02/2024 |
| 72.3.2 | South Gauteng High Court | 054368/2024 |
| 72.3.3 | South Gauteng High Court | 116389/2023 |
| 72.3.4 | South Gauteng High Court | 04252/2023 |
| 72.3.5 | South Gauteng High Court | 134393/2023 |
| 72.3.6 | South Gauteng High Court | 098074/2023 |

[73] The applicant submits that the respondent has been performing the duties of a conveyancer despite the fact that he is not a conveyancer. He has also been operating without a fidelity fund certificate since 2022.

[74] The applicant further submitted in court that it is not peremptory that the applicant must first have a disciplinary hearing before bringing a matter before court. They argue that the court must protect the members of the public and maintain the integrity and dignity of the legal profession by striking the respondent from the roll of practicing attorney and a *curator bonis* be appointed.

[75] The respondent in open court as well as in his answering affidavit contends that he did not state that he does not do his books on a monthly basis. He stated that he does his books on a monthly basis. He explained that he does his books internally and sends the books and bank statements to his external bookkeeper on a quarterly basis to verify.

[76] Regarding the issue of the trust deficits, the respondent denied that a trust deficit exists. In his supplementary affidavit as well submissions in court it was stated that the auditor of the applicant was working from incomplete documents. He submits that he presented the complete bookkeeping including an affidavit from his bookkeeper confirming that there is no trust deficit.

[77] The respondent made a submission in court that after receiving the report from Mr Swart, the applicant did not ask for further information from him before proceeding to court. He also contends that it is not clear which of the complainants are complaining or saying that they never received their monies form him.

[78] In his heads of argument the respondent submits that after the launch of the application and unbeknown to him the applicant commenced a fresh investigation. Upon being approached by Mr Swart, who was allegedly appointed by the applicant to conduct a new investigation, he undertook to make enquiries to the applicant's attorneys. His attorneys addressed a letter to the applicant's attorneys enquiring about the details of the fresh investigation and no response was received.

[79] Regarding the complaint that he failed to account to clients, the respondent submits that there is no complaint that he can trace regarding accounts not being provided to clients.

[80] Regarding the complaint of non-co-operation with the investigation, the respondent submits that this is without merit. He submits that the investigation against him began during the Covid-19 lockdown and he did everything nec-

essary to provide the requested information to the original investigator. When he was confronted by Mr Swart, he made enquiries through his attorneys from the applicant's attorneys why a new investigation was being commenced in the middle of the application to strike him off the roll of practicing attorneys. No response was received to this query.

[81] The respondent contends that he was not afforded the benefit of the internal dispute resolution mechanism. He relies on the matter of **Motswai v RAF 2014 (6) SA 360 SCA paragraphs 46 – 59**, where the court held that before findings are made by a court against a litigant, the interested parties must be given an opportunity to deal with issues fully, including allowing them to make all the relevant facts available to the court. These principles were followed with approval in the matter of **Mavudzi and Another v Majola and Others (49039/2021) [2022] ZAGPJHC 575; 2022 (6) SA 420 at paragraph [22]**, where the court held as follows:

> *"A court may not risk making material criticisms of a legal practitioner without a proper opportunity for that practitioner to be heard in respect of the allegations or of prima facie acts of misconduct. This proposition is incontrovertible. The SCA in **Motswai v RAF 2014 (6) 360 SCA** was called upon to consider the critism made by the judge in the trial about the conduct of certain attorneys…"*

[82] The respondent further relies on the matter of **Van der Berg v GCB [2007] 2 ALL SA 499 at paragraph [2]**, where the court stated as follows:

> *"Proceedings to discipline a practitioner are generally commenced on notice of motion but the ordinary approach as outlined in Plascon-Evans is not appropriate to applications of that kind. The applicant's role in bringing such proceedings is not that of an ordinary adversarial litigant but is rather to bring evidence of a practitioner's misconduct to the attention of the court, in the interests of the court, the profession and the public at large, to enable a court to exercise its disciplinary powers. It will not always be possible for a court to properly fulfil its dis-*

*ciplinary function if it confines its enquiry to admitted facts as it would ordinarily do in motion proceedings and it will often find it necessary to properly establish facts. Bearing in mind that it is always undesirable to attempt to resolve factual disputes on the affidavits alone (unless the relevant assertions are so far-fetched or untenable as to be capable of being disposed of summarily) that might make it necessary for the court itself to call for oral evidence or for the cross-examination of deponents (including the practitioner) in appropriate cases. In the present case that might well have been prudent and desirable so as to resolve the many questions that are raised by the evidence, but that notwithstanding, the appeal can in any event be properly disposed of on the undisputed facts. (For that reason, it is also not necessary to revisit what degree of persuasion evidence must carry before facts can be taken to have been established in cases of this kind."*

[83] Regarding the complaint of practicing without a fidelity fund certificate, the respondent stated in court that the applicant is the one refusing to grant him the necessary certificate as he had made the required application that he be issued with a fidelity fund certificate.

[84] Regarding the complaint of doing the work as if he is a conveyancer, the respondent denied this in court and submitted that he has a conveyancer who assists him with these transactions.

[85] The respondents contends that there are factual disputes that require oral evidence be heard and the appropriate forum to deal with the complaints would be the disciplinary committee of the applicant.

[86] In the matter of **Du Plessis Prokureursorde, Transvaal 2002 (4) SA 344 (T) at para 348G G/H and I AT 350 C**, the court held that:

*"…an application to strike the name of an attorney from the roll could be brought even if the respondent's own disciplinary hearing had not yet been*

*completed. The Law Society could even bring an application for removal without any preceding investigations having been conducted".*

[87] In the matter of **Bothma v Law Society of the Northern Provinces 2017 JDR 1021 (GP) at paragraph 28**, the applicants' legal representatives raised a concern that the applicants will not be given a fair hearing if the disciplinary process of the law society are not exhausted prior to the court hearing. The court found this concern to be unfounded and noted that the rules of court make ample provision for a fair hearing. The court further held that the applicants are granted sufficient opportunity to file an answer to the allegations contained in the founding affidavit. Should such an answer raise a real dispute of fact, the dispute may in the discretion of the court be referred to oral hearing.

[88] The court in the matter of **Law Society of Northern Provinces v P.A Morobadi [2018] ZASCA 185**, it was held that it is not peremptory for the Council to have pursued a formal charge before a disciplinary committee if in its opinion, the particular attorney was no longer considered to be a fit and proper person to remain in practice as an attorney.

[89] Under Section 22(1)(a) of the LPA No 28 of 2014, a legal practitioner may be removed from the roll of practicing legal practitioners for among others;

89.1 Professional misconduct, which includes a failure to comply with statutory duties, ethical obligations and the professional requirements of the legal profession; and

89.2 Conduct unbefitting of an attorney, which encompasses failures such as improper record-keeping, noncompliance with trust account regulations, failure to cooperate with regulatory investigations and rendering substandard legal services.

[90] Section 31(1) of the LPA empowers the High Court to strike an attorney from the roll of practicing attorneys if they are found to be unfit to practice law. This

provision serves to maintain the credibility and professionalism of the legal profession.

[91] Section 33(4) of the LPA provides as follows:

*"A legal practitioner who is struck off the roll or suspended from practice may not –*

*(a) render services as a legal practitioner directly or indirectly for his or her own account, or in partnership, or association with any other person, or as a member of a legal practice; or*
*(b) be employed by, or otherwise be engaged, in a legal practice without the prior written consent of the Council, which consent may not be unreasonably withheld, and such consent may be granted on such terms and conditions as Council may determine."*

[92] The applicant is tasked with enforcing compliance with the LPA and the LPC Rules. In terms of section 37(2)(a) of the LPA, legal practitioners are required to cooperate fully with the applicant's investigations, which include responding to requests for documentation, providing access to financial records and attending hearings when required.

[93] Section 84 of the LPA provides as follows:

"Obligations of a legal practitioner relating to handling of trust monies

*(1) Every attorney or any advocate referred to in section 34(2)(b), other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or state advocate and who practices or is deemed to practice –*

*(a) For his or her own account either alone or in partnership; or*

*(b) As a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund Certificate.*

*(2) No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund Certificate*

*(3) The provision of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered."*

[94] The proper approach to misconduct complaints against legal practitioners is well established and has been applied to many cases. It is a three stage enquiry.

94.1 **Firstly**, the court should determine whether the conduct complained about has been established on a balance of probabilities. This is a factual enquiry.

94.2 **Secondly**, if the misconduct has been established, the court enquires whether the legal practitioner is a fit and proper person to remain on the roll of practicing legal practitioners.

94.3 **Thirdly**, if the legal practitioner is found not to be a fit and proper person to remain on the roll, the court must determine a sanction, whether the legal practitioner's name should be removed from the roll of practicing legal practitioners or be suspended for a determinate period.

94.4 It is noteworthy to mention that in the second and third stages, the court exercises its discretion.

[95] After careful consideration of the documents filed and the submission by the parties, especially the respondent's submission that the applicant should have

given him an opportunity to appear before a disciplinary hearing before bringing the application before court is completely unmeritorious. This issue has been decided upon by our court on numerous occasions. In the matter of **Bothma** referred to above in paragraph 87 above, the court had found a similar concern to be unfounded and noted that the rules of court make ample provision for a fair hearing. Furthermore, the SCA in the matter of **LSNP v Morobadi [**held that it is not peremptory for the Council to have pursued a formal charge before a disciplinary committee if in its opinion, the particular attorney was no longer considered to be a fit and proper person to remain in practice as an attorney. The LPC had already made an opinion that the respondent's continuous practice as an attorney poses a significant risk to his clients, the Legal Practitioner's Fidelity Fund and the legal fraternity as a whole.

[96] Lest we forget, the application before us is in fact sui generis in nature. There is no *lis* between the applicant and the respondent. The applicant as the *custos murum (*custodian of the legal practitioner's profession) is merely performing its statutory obligation and common law duty to place all the relevant facts before the court, to enable the court to exercise its inherent disciplinary function over its officials, the legal practitioners.

[97] Attorneys are expected to maintain meticulous and accurate trust account records, which must be audited regularly to ensure compliance with the LPA and the LPC Rules. Any deviation from these requirements constitutes a breach of fiduciary duty and amounts to professional misconduct.

[98] Upon close scrutiny of the respondent's conduct regarding his dealings with the two auditors appointed by the applicant, the court has noted that he was unresponsive and uncooperative to the investigations. He was requested to provide

firm's accounting records for the years ended from 28 February 2020 to 28 February 2023 and also for the period up to 31st July 2023. He was also requested to prepare all the firm's documents on how the firm resolved the complaints against the firm that the applicant received. Because of his unresponsiveness both auditors had to prepare their reports with the little information they could obtain from the bank and the incomplete documents provided to the first auditor. The complete books of the firm remained unavailable which resulted in reports that indicated that there was some discrepancies in the trust account which pointed to trust deficits. The respondent's submission that he did cooperate and that he did provide the required information is highly improbable. Both auditors did illustrate in their reports their frustrations in trying to meet with the respondent on numerous occasions to no avail. The respondent's failure to cooperate with the investigations undermined the regulatory framework provided in section 37(2)(a) of the LPA and the court views this as a serious misconduct.

[99] The applicant made submissions that the respondent did not do his books on a monthly basis as required and only did them quarterly. He disputed this and stated that he did his books monthly as required by the rules. The version of the respondent is highly improbable taking into consideration his reluctance to cooperate with the auditors and produce the books and financial records as requested.

[100] The applicant brought the fact that the respondent has been operating without a fidelity certificate since 2022. The respondent's response is to blame the applicant for this situation as he states they are simply refusing to provide him with the required Fidelity Fund Certificate. This in our view is disingenuous on the part of the respondent. The respondent has completely and knowingly acted in contravention of section 84 of the LPA which the court views as a gross misconduct on the part of any legal practitioner. This conduct strikes at the heart of the fiduciary relationship between an attorney and his client and poses a direct threat to the legal profession and the proper functioning of the Legal Practitioner's Fidelity Fund.

[101] The applicant submits that the respondent held himself out to members of the public as a conveyancer and performed the duties of a conveyancer. The respondent disputed this and stated that he has a conveyancer assisting him in the firm. Upon closer scrutiny of the numerous complaints only two were not

related to conveyancing transactions. To be exact there were 33 complaints brought before the court for consideration. What is gravely concerning to the court is the fact that the respondent and his employees performed the conveyancing work far below the professional and ethical standards required of a legal practitioner. The manner in which the transactions were conducted does not reflect that a conveyancer was overseeing or supervising the management of the files.

[102] On numerous occasions, immediately after the deed of sale has been signed, the purchase price would either be paid into the trust account of the firm or personal accounts of the employees of the firm. Thereafter the monies would be transferred into the accounts of the sellers and the agents before any work was done on the file and before the property is transferred into the names of the purchaser. In some instances, unregistered estate agents would be used by the firm in complete disregard of the law. Conveyancers are highly qualified property law specialist who would not easily behave in the manner described above. The respondent and his employees would sometimes not even deposit the purchase price into the trust account before transferring the finds to the sellers. This resulted in great distress on the part of the sellers in instances where the transaction collapsed. This kind of behaviour by the respondent and his employees is unethical, irresponsible and is conduct unbecoming of a legal practitioner and the court frowns upon such behaviour.

[103] The actions described above and, in the auditor's, reports are indicative of a breach of fiduciary duty owed to his clients, a systematic failure to adhere to the basic financial and ethical obligations expected of a legal practitioner. By mismanaging and misappropriation of funds, the respondent has jeopardized the financial wellbeing of his clients and undermined public confidence in the legal profession and also posed a risk to the Legal Practitioner's Fidelity Fund.

[104] On closer scrutiny of the complaints against the respondent, the court has noted that a certain Mr Mathebula has been assisting the respondent with the selling of properties as well as assisting clients in his law firm. The applicant submits that Mr Mathebula was an attorney who has been struck off the roll of

practicing attorneys on the 29th March 2012. The respondent's response is that he does not know of these transactions and his name has been used without his consent and those affected must report the matter with the police. He does not address the fact that Mr Mathebula is found by clients in his office holding himself out as an attorney. This is a blatant disregard of section 33(4) of the LPA which stipulates that a person who has been struck off may not render as a legal practitioner without the prior written consent of the LPC.

[105] The various complaints against the respondent stated at paragraphs 12 to 72 above displays a consistent pattern of negligence, financial mismanagement and failure to account and communicate adequately with his clients. In a few of the matters the dispute has been resolved and the rest remain. The respondent's response is that he has resolved most of the disputes without submitting anything to corroborate his submission. The court is of the view that the respondent's version is highly improbable.

[106] I find that the respondent is not a fit and proper person to remain on the roll legal practitioners. His conduct demonstrates a blatant disregard for the ethical and professional standards expected of attorneys. He deceived members of the public by holding himself out as a conveyancer, misappropriation of trust funds, he displayed gross negligence in the management of his practice and repeatedly contravened the provisions of the LPA and the Rules of the LPC.

[107] Having found the respondent to be dishonest, he is to be struck from the roll of legal practitioners. The Supreme Court of Appeal in the matter of **Malan and Another v Law Society of the Northern provinces 2009 (1) SA 216 (SCA) @ para 10,** held as follows:

*"[10] …*

*Obviously, if a court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal. (*

*Exceptional circumstances were found in the Summerley v Law Society Northern Provinces 2006 (5) SA 613 (SCA)  …"*

[108] There are no exceptional circumstances that merit the court ordering a suspension. The respondent instead of addressing the substance of the allegations against him blamed the applicant for having not granted him a disciplinary hearing and refusing to grant him a Fidelity Fund Certificate. This can hardly be considered exceptional circumstances it actually displays the fact that the respondent does not take seriously the grave complaints against him, and he has little regard for the blatant disregard for ethical and professional standards expected of attorneys.

[109] The respondent's conduct undermines the public trust in the legal profession and poses a serious risk to his clients, the legal profession and the Legal Practitioners Fidelity Fund. The court is duty bound to protect the members of the public, maintain confidence in the legal system and upholding the integrity of the legal profession by acting decisively when legal practitioners fall short of the standard expected of a legal practitioner.

[110) Under the circumstances the following order is made:

1. The respondent, Hosea Rendani Munyai, be struck from the roll of attorneys of this Hounarable Court and that the respondent is hereby interdicted and restrained from practicing and/or holding himself out as an attorney of this Honourable Court.

2. The respondent surrender and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court.

3. In the event of the respondent failing to comply with the terns of this order detailed in paragraph 2 (two) *supra* 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.* The respondent is prohibited from handling or operating on his trust accounts as detailed in paragraph 5 (five) *infra.*

5. The current Director of the Gauteng Provincial Office of the applicant (or his successor as such) in his capacity as such, 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 estate under curatorship connected to the respondent's practice as an attorney 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)&(2) of Act No 28 of 2014and/or any separate savings or interest bearing accounts as contemplated by section 86(4) of Act No 20 of 2014, in which monies from such trust banking account have been invested by virtue of the said sub-sections or in which monies in any manner have been deposited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties: 78(2) and/or section 78 (2A) of Act No, 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said subsections 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 an duties:

5.1 Immediately to take possession of respondent's accounting 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 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 it, if necessary in the interest 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)&(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 respondent was and may still have been concerned and to receive such monies and to pay the same credit of the trust account(s);

5.3 To ascertain from the respondent's records the names of all persons on whose account the respondent appears to hold or have received trust monies (hereinafter referred to as "trust creditors") and to call upon the respondent to furnish the Curator within 30 (thirty) days of the date of this Order or within such further period as the Curator may agree to in writing with the names and addresses of, and amounts due to, all trust creditors;

5.4 To call upon such trust creditors to furnish such proof, information and/or affidavits as the Curator 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 money in the said accounts 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 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 utilize 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 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 respondent , if he is solvent, or, if respondent is insolvent, to the trustee(s) of 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 claims 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 Board of Control;

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 attorneys, 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 or have been dealt with, until such time as the Board notifies him that he may regard his duties as Curator as terminated.

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

6.1 Any monies received, held or paid by respondent for or on account of any person while practicing as an attorney;

6.2 Any monies invested by 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 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 Corporation Act No 69 of 1984, administered by respondent as or on behalf of the liquidator; and

6.9 Respondent's practice as an attorney 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, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such Curator or his nominee.

7. Should the respondent fail to comply with the provisions of the preceding paragraph of this court 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. 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 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 Winding-up of the respondent's practice.

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

9.1 Executor of any estate of which 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 persons 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 section 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 Corporation Act No 69 of 1984;

9.7 Administrator appointed in terms of section 74 of the Magistrates Act No 32 of 1944.

10. 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 him (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.

11. 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.

12. The respondent be and is hereby directed :

12.1 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;

12.2 To pay reasonable fees of the auditor engaged by the applicant;

12.3 To pay the reasonable fees and expenses of the Curator, including travelling time;

12.4 To pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the Curator as aforesaid;

12.5 To pay the expenses relating to the publication of this order or an abbreviated version thereof

12.6 To pay the costs of this application on an attorney and client scale

13. The reserved costs of the 13th February 2025 are unreserved, and each party will bear their own costs of that day.

**MMD LENYAI J**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

I agree and it is so ordered.

**D MAKHOBA J**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

**Appearances**

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|---|---|---|
| Counsel for Appellants | : | Adv Zainoon Mahomed |
| Instructed by | : | Mothle Jooma Sabdia |

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|---|---|---|
| Counsel for Respondent | : | Adv Yasmin Omar |
| Instructed by | : | Zehir Omar Attorneys |
| Date of hearing | : | 29 July 2025 |
| Date of Judgement | : | 14 January 2026 |