

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

Reportable

Case no: 2009/2017

In the matter between:

THE LAW SOCIETY OF THE FREE STATE

APPLICANT

and

YOLANDI HEWETSON

FIRST RESPONDENT

ALEXANDER HEWETSON

SECOND RESPONDENT

HEWETSON INCORPORATED

THIRD RESPONDENT

Neutral citation: *The Law Society of the Free State v Hewetson* (2009/2017) [2026]
ZAFSHC 31 (29 January 2026)

Coram: LOUBSER J and BOONZAAIER AJ

Heard: 28,29,31 October and 11 December 2025

Delivered: 29 January 2026

Summary: Misconduct of attorney – failure to report co-director for misappropriation of trust funds – determination of the appropriate sanction to be applied and suitability to be fit and proper to practice as attorney.

ORDER

1 The order of the high court dated 15 December 2017 is set aside and replaced with the following:

‘1.1 The first respondent is suspended from practice for a period of one (1) year.

1.2 The period of suspension is to be retroactively effective from the date of the original decision on 15 December 2017.

1.3 The applicant is ordered to pay the costs of the proceedings on 28, 29 and 31 October 2025 and 11 December 2025 which costs to include the costs of counsel to be taxed on Scale C.’

JUDGMENT

Boonzaaier AJ (Loubser J concurring)

[1] This matter is before the Court for determination following the hearing of oral evidence regarding the appropriate sanction to be applied to the first respondent and her suitability to be considered fit and proper to practice as an attorney. She was struck off the roll of attorneys in this Division on 15 December 2017. The matter then came before the Supreme Court of Appeal (the SCA), and was referred back to the court *a quo* in a majority decision.¹ The minority judgment, per Leach JA (with Weiner AJA concurring), held that the first respondent should be struck off, without deciding whether the first respondent knew of or approved the misuse of the trust fund.

[2] The majority, per Nichols JA (with Cachalia JA and Hughes AJA concurring), found that there are gaps and contradictions in the first respondent’s evidence, which are a cause for concern. Nichols JA held the following:

‘If one has regard to the apparent contradictions between her own affidavit s and the affidavit of Mr. Knoetze there is a discrepancy which requires an explanation from the appellant. Likewise, the SMS and WhatsApp exchanges between Mr. Hewetson and the appellant require an explanation insofar as they are indicative of prior knowledge of her husband’s misuse of trust funds. Ms.

¹ *Hewetson v Law Society of the Free State* [2020] ZASCA 49; [2020] 3 All SA 15 (SCA); 2020 (5) SA 86 (SCA).

Petzer's allegations, although not wholly convincing, also require a response. There may well be satisfactory explanations for all the apparent contradiction but, given the nature of the application, it is in the public interest that a hearing be conducted on these narrow issues, in addition the appellant is required to explain her delay, if any, in reporting the matter to the Law Society.¹²

[3] When a matter of this nature comes before the Court, it is inherently sensitive, as it implicates the integrity of the profession and bears directly on the confidence of the community in the manner in which such misconduct is addressed. As in all matters before this Court, and as mandated by the Constitution, every person is entitled to a fair trial, which extends to the imposition of an appropriate sanction or sentence. Section 35(3) of the Constitution, guarantees the right to a fair trial.³ Although this application arises in a disciplinary context and is *sui generis*,⁴ it follows that the same procedural rights applicable in a criminal trial are relevant and must be observed.

[4] The merits regarding the misconduct and the background of the matter were thoroughly considered in the Court *a quo* and the Supreme Court of Appeal. I therefore deem it unnecessary to recount them in full. The first applicant was admitted as an attorney on 15 January 1998 and worked as a professional assistant during 1998 and 1999 at Mhlambi Hewetson Incorporated in Welkom, Free State Province. The second respondent was admitted as an attorney on 14 February 1985 which made him senior in the firm. During the year 2000, the first respondent and the second respondent started a new firm in Theunissen, namely Alex Hewetson Attorneys (the third respondent) with branches in Theunissen and Virginia. The first respondent and second respondent were married during 2001 and they shortly thereafter incorporated the third respondent. The first respondent and second respondent were the only directors and shareholders of the third respondent.

[5] The court *a quo*, on 23 June 2016, made the following order insofar it is relevant to the first respondent and to these proceedings:

'2.1 The first and second respondent are interdicted and restrained from operating , directly or indirectly, the practice's current trust account (account number: 1662008376) and Standard Bank

² Ibid para 37.

³ Section 35(3) of the Constitution of the Republic of South Africa, 1996, guarantees the right to a fair trial. Courts have consistently held that sentencing forms an integral part of the trial process; therefore, fairness under section 35(3) necessarily encompasses the imposition of a just and appropriate sanction.

⁴ *Hepple and Others v Law Society of the Northern Provinces* [2014] ZASCA75; [2014] All SA 408 SCA para 9.

Theunissen account , account number 042159709(hereinafter called" the bank accounts") and all current deceased and insolvent estate banking accounts , pending the further investigation by the Applicant`s council as to whether the Court should be approached for an order to suspend the respective respondents or either of them from practice or to strike the respective respondents or either of them from the roll of attorneys or of notaries or conveyancers, as the case may be, kept by the Registrar of the Court , and in the event of an application for the suspension or striking of is made , then finalisation of such application.

2.2 That the first and second respondents are interdicted and restrained from directly or indirectly contacting, soliciting or enticing clients /trust creditors or members of the public to make payments to him/her other by paying to the firm in the current accounts or estate and insolvent estate`s banking accounts held by the firm and from receiving any funds from clients /trust creditors or members of the public.'

[6] On 15 December 2017, the court *a quo* issued an order, amongst others, in terms of which the first and second respondent's names were struck of the roll of attorneys and interdicted and restrained from practising and holding themselves out as attorneys of the court whilst their names are struck from the roll. On 1 August 2018, the Supreme Court of Appeal granted special leave to appeal against this order to the first respondent. In her notice for leave to appeal, the first respondent sought the following variation of the order granted on 15 December 2017 by the court *a quo*:

'1. The appeal is upheld with costs.

2. The order in the court *a quo* is set aside and replaced with the following order:

2.1 Appellant is suspended from practice for one (1) year, and the suspension is suspended for a period of one (1) year on condition that the Appellant does not render herself guilty of unprofessional conduct . . . '

[7] On 5 May 2020, the Supreme Court of Appeal issued the following order:

'1. The appeal is upheld to the extent that the order of the High Court of 15 December 2017 is set aside only insofar as it refers to the Appellant.

2. The High Court's order of 23 June 2016 insofar it applies to the Appellant is reinstated pending the finalisation of the High Court of the application to strike her from the roll.

3. The application to strike the Appellant from the roll of attorneys is referred to a freshly constituted bench of the Free State High Court for its determination after hearing such oral evidence as the parties seeks to place before it in regard to the Appellant's fitness to remain on the roll, and in particular as to:

- (a) when the Appellant first became aware of her husband's abuse of the trust funds;
- (b) the extent of her knowledge;
- (c) whether the Appellant agreed to or was in any way a party to the withdrawal of trust funds from the account of M Ahmed Nabil;
- (d) the Appellant's explanation for the delay, if any, in reporting trust fund deficiencies to the Law Society.'

[8] The first respondent called Mr Dries Knoetze (Mr Knoetze), a former colleague of the parties, to testify. Knoetze presented his evidence in a thorough, coherent, and professional manner. Mr Knoetze is an attorney who joined the third respondent in or about 2010. He is currently a director at Neumann and van Rooyen Incorporated. He explained to the Court that the third respondent's professional staff regularly received an A-to-Z list reflecting the firm's clients and corresponding trust balances. He further confirmed the acrimonious relationship that existed between the first and second respondent.

[9] Mr Knoetze explained that, on 13 November 2015, he became aware, upon perusal of the A-to-Z list, that trust funds relating to Nian Shun had been utilised by the second respondent. He immediately informed the first respondent thereof. Upon receiving this information, the first respondent became visibly distressed and promptly confronted the second respondent regarding the matter. He overheard the conversation that took place between the first and second respondents which followed. Upon discovering the misconduct, she was profoundly dismayed, dealt with the matter candidly, and confronted the second respondent without delay once the misconduct came to her attention. Following that altercation, the second respondent left the firm and did not further partake in any of the business activities of the third respondent. Mr Knoetze was also involved in the informal audit which took place during December 2015. Mr Knoetze was properly cross-examined and he was referred to his affidavit where he referred to the date of October 2015. His answer to that was essentially as follows:

'I don't know if it was trust or business money – I was not sure.'

[10] Mr Knoetze was unable to assist in respect of the matter of Ahmed Nabil. He correctly conceded that he was unable to express any opinion regarding the knowledge the first respondent may have had concerning the second respondent's conduct in relation

to the misappropriation of trust funds. He further testified that she was at no stage involved in any dishonest activities within the practice.

[11] The second respondent thereafter testified, explaining the internal workings of the third respondent and her nominal status as a co-director. She stated that she was never treated as a director in practice, as the second respondent – her spouse – effectively ran the firm, particularly after her return to the office in January 2014. She further testified that she never received a formal salary or director's remuneration. Instead, a credit card was made available to her by the second respondent, which she used to purchase basic necessities. She confirmed that the second respondent exercised complete control over the third respondent's trust account.

[12] She described the extremely acrimonious relationship that existed between herself and the second respondent, and the considerable difficulty this created within the firm. Following the complaint laid against Ms Petzer in early 2015, after she had left the firm, the situation deteriorated further. The second respondent became aggressive and increasingly disrespectful towards the first respondent, rendering the circumstances difficult for her to endure. She further explained the events of 13 November 2015, when Mr Knoetze informed her that the trust funds of Nian Shun had disappeared. She had also independently received the A-to-Z list and observed the same irregularity. She immediately confronted the second respondent, who failed to provide any acceptable explanation.

[13] According to her evidence, 13 November 2015 was the date on which she first became aware of the misappropriation of trust funds by the second respondent. She acknowledged that her affidavit dated 15 January 2016 creates the impression that she only became aware of trust account discrepancies during December 2015. She confirmed that she personally prepared that affidavit, but explained that she was not in a sound mental state at the time of drafting it. In support of this explanation, she submitted a medical certificate evidencing her stress and emotional instability. She further testified that, as from 13 November 2015, she knew that she would be required to report the matter to the applicant. However, she first sought to come to terms with this reality and to place pressure on the second respondent to repay the trust funds he had misappropriated.

[14] The first respondent acknowledged that she had sent the WhatsApp message to

Mr Hewetson on 19 November 2015, which reads:

‘Ek het nou finaal genoeg gehad van jou aanwending van trustgeld vir persoonlike gewin. Asook jou gevloek op my.’

The second respondent replied to her message as follows:

‘Jy moet sê as ek moet gaan, ek was doodstil in my kantoor toe jy inbars en op my skree, nie ek op jou nie, ek kan nie meer met jou nie.’

She acknowledged that the wording of her message was unfortunate and misleading. She explained that it was sent at a point when she had reached the limits of her endurance. She expressly denied that the message indicated any prior knowledge on her part of the misappropriation of trust funds, and reaffirmed that 13 November 2015 was the date on which she first became aware that the second respondent had misappropriated trust funds.

[15] She ceased practicing as an attorney on 15 December 2017. Since then, she has attempted to earn a livelihood through online work. She testified that she has been financially ruined. She expressed the view that a suspension would be an appropriate sanction, rather than being struck from the roll. She further testified, unequivocally, that, at present, she regards herself as a fit and proper person to continue practicing as an attorney. She confirmed that she knew she was required to report the second respondent to the applicant and maintained that she did so. She acknowledged that the obligation arose on 13 November 2015. She further conceded that there may be a contradiction between her affidavit and that of Mr Knoetze, attributing this to an error, and reaffirmed that 13 November 2015 was the correct date.

[16] According to her, after 13 November 2015, numerous files were identified as having discrepancies. Initially, she did not find it unusual that the second respondent purchased houses, as he had inherited money from his mother. She stated that she had not suspected he had used trust funds prior to 13 November 2015.

[17] She was confronted with her WhatsApp message stating she had ‘finaal genoeg gehad’ and explained that, although the wording could create assumptions, it referred to events six days later. She said her Post-Traumatic Stress Disorder and cumulative stress contributed to her emotional state, and the message reflected her frustration with the second respondent. The second respondent did not recognise her as a director. She acknowledged that she could have left the third respondent but chose not to for personal

reasons, citing a long-term difficult marriage, ongoing workplace disrespect, and the gradual decline of their relationship before 2015.

[18] She investigated Ms Petzer and actively tried to persuade the second respondent to repay misappropriated funds, without waiting for him to do so. She knew she risked scrutiny from the Law Society but would have reported him regardless. Her mental state at the time was poor, and she described being on the verge of a breakdown. She did not have a back-up plan. The second respondent was aware that her WhatsApp referred to 13 November 2015 and mocked her. She testified that the period was extremely challenging and emotionally draining.

[19] Although she knew she should have reported second respondent immediately, she did not. She delayed because she did not have a back-up plan. She described him as vexatious and acknowledged the need to take control of the situation. She was also mindful that the staff's jobs depended on both of them remaining in the firm. She confirmed she had limited access to a debit card and never received a formal salary, despite income being reflected in the firm's books. She denied knowing about the misappropriation of trust funds before November 2015 and rejected the suggestion that she waited until her divorce to act. When it was suggested that she had known of the second respondent's misappropriation of trust funds long before November 2015, she vehemently denied it. She also testified that, to the best of her knowledge, the final deficit amounted to approximately R700 000, which was subsequently paid by the Fidelity Fund. She never benefitted from the money which the second respondent misappropriated and never took part in any act of misappropriation.

[20] Ms Petzer was not called as a witness as she was unavailable to testify due to illness. It was submitted that her evidence was, in any event, compromised due to the fact that the first respondent reported her earlier to the applicant for theft of money which she later admitted.

[21] The applicant, on the other hand, contended that it is common cause that the first respondent is an experienced practitioner and is therefore fully aware of the scope and extent of her duties concerning trust funds. She has accepted that, as a director of the firm, each director of an incorporated company bears joint and personal liability for the

company's acts and omissions. Her lack of involvement in the financial management of the firm affords no defence, as compliance with the Legal Practice Act 28 of 2014 (the Act) and the rules is a non-delegable duty imposed on all attorneys practicing as directors of a company, it was contended.

[22] The applicant further submitted that, in addition to the aforementioned considerations, an attorney's duty to preserve trust money is a fundamental, positive, and unqualified obligation. Neither negligence nor wilfulness is required to establish a breach of this duty.⁵ The applicant raised the same concern as that expressed by the Supreme Court of Appeal, namely that, in the affidavit submitted by the first respondent to the Law Society when reporting the firm's trust account difficulties in January 2016, she stated, under oath, that she had been unaware of any trust account irregularities until December 2015. It is not in dispute that this statement was false. In her subsequent affidavits, dated 18 March 2016 and 8 June 2018 respectively, the latter being the answering affidavit in the striking-off application, she admitted that she had, in fact, become aware on 13 November 2015 of the misappropriation of a substantial sum of money from the trust account of a client, Nian Shun. This was further confirmed by the affidavit of Mr Knoetze, who corroborated this fact in his testimony during these proceedings.

[23] The applicant submitted that, although it is now contended that the date on which she became aware of the misappropriation was 13 November 2015, she did not state in her answering affidavit to the striking-off application that she first became aware of the second respondent's misappropriation in November 2015. Furthermore, the first respondent failed to provide any reasonable explanation for the false statement made under oath in her report concerning the second respondent's misappropriation. In light of this dishonesty, she is accordingly not a fit and proper person to continue practicing as an attorney.

[24] If the Court considers the relevant portions of the Supreme Court of Appeal's majority judgment delivered on 5 May 2020; it is important to note that:

(a) The first respondent, for purposes of her appeal, has conceded that she is not a fit and proper person to practice and therefore the only question that remains is whether the high

⁵ *Incorporated Law Society Transvaal v Behrman* 1977 (1) SA 904 (T) at 905H.

court was correct in striking her off the roll. She contended that her suspension from practice would have been sufficient.

(b) Should this Court find that a suspension was the appropriate sanction, the question would arise whether the first respondent is a fit and proper person to practice as an attorney.

[25] As a point of departure, she had to convince the court, on a preponderance of probabilities, that her character is of such nature as to serve the legal profession in utmost diligence and honesty.

[26] In *South African Legal Practice Council v Chalom*,⁶ Mudau J held as follows:

'In exercising its discretion, the court embarks upon a three-stage inquiry. The first inquiry is for the court to decide whether the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry. Once the court is satisfied that the offending conduct has been established, the second inquiry is whether the practitioner concerned is a fit and proper person to continue to practise. This inquiry entails a value judgment, which involves the weighing up of the conduct complained of against the conduct expected of an attorney. If the court holds the view that, the practitioner is not a fit and proper person to practise as an attorney, the third inquiry is whether in all the circumstances, the practitioner in question is to be removed from the roll of attorneys or whether an order suspending him from practice for a specified period will suffice. This will depend on factors such as the nature of the conduct complained of the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately, this is a question of degree. In deciding whether an attorney ought to be removed from the roll or suspended from practice, the court is not primarily imposing a penalty. The main consideration is the protection of the public.'

[27] From the above judgment, it is clear that a legal practitioner must strictly comply with the Act, its rules, and the Code of Conduct, having pledged integrity to society, the courts, and the profession upon taking the oath. When a practitioner's conduct falls short, the courts and the Legal Practice Council (the LPC) have a duty to intervene to protect the public, uphold professional values, and maintain the integrity of the courts and the legal

⁶ *South African Legal Practice Council v Chalom* [2020] ZAGPPHC 663 para 16-18.

profession, as public confidence is undermined when professional standards are weakened.

[28] In *Malan & Another v Law Society of the Northern Provinces (Malan)*,⁷ the SCA pronounced that this ultimately boils down to a question of degree.⁸ For present purposes, it is convenient to take cognisance of what the Court found in *Malan*:⁹

'The nature of the conduct may be such that it establishes that the person is not a fit and proper person to continue to practise. In other instances, the conduct may not be that serious and a law society may exercise its disciplinary powers, particularly by imposing a fine or reprimanding the attorney (s 72(2)(a)). This does not, however, mean that a court is powerless if it finds the attorney guilty of unprofessional conduct where such conduct does not make him unfit to continue to practice as an attorney. In such an event the court may discipline the attorney by suspending him from practice with or without conditions or by reprimanding him: *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A) at 638I-639E; *Law Society of the Cape of Good Hope v Berrangé* 2005 (5) SA 160 (C) at 173G-I, [2006] 1 All SA 290 (C) at 302.'

[29] The Court found that, firstly, in deciding on whichever course to follow, the Court is not first and foremost imposing a penalty. The main consideration is the protection of the public. Secondly, that logic dictates that if a court finds that someone is not a fit and proper person to continue to practise as an attorney, that person must be removed from the roll. However, the Act contemplates a suspension. This means that removal does not follow as a matter of course. If the court has grounds to assume that after the period of suspension the person will be fit to practise as an attorney in the ordinary course of events, it would not remove him from the roll but order an appropriate suspension.

[30] The Court stated that, in this regard, the following must be borne in mind:

'The implications of an unconditional order removing an attorney from the roll for misconduct are serious and far reaching. *Prima facie*, the Court which makes such an order visualises that the offender will never again be permitted to practise his profession because ordinarily such an order is not made unless the Court is of the opinion that the misconduct in question is of so serious a nature that it manifests character defects and lack of integrity rendering the person unfit to be on the roll. If such a person should in the years apply for re admission, he will be required to satisfy

⁷ *Malan and Another v Law Society of the Northern Provinces* [2008] ZASCA90; 2009 (1) SA 216 (SCA); [2009] 1 All SA 133 (SCA).

⁸ *Ibid* para 5-9.

⁹ *Ibid* para 5.

the Court that he is “a completely reformed character” (*Ex parte Wilcocks* 1920 TPD 243 at 245) and that his “reformation or rehabilitation is, in all the known circumstances, of a permanent nature” (*Ex parte Knox* 1962(1) SA 778 (N) at 784). The very stringency of the test for re-admission is an index to the degree of gravity of the misconduct which gave rise to disbarment.’

[31] With the first respondent conceding that the offending conduct has been established as evinced above, this Court must now exercise a value judgment, to arrive at a decision whether the first respondent is a fit and proper person to practice as an attorney. Having regard to all the circumstances of the case, the Court needs to determine whether the first respondent should be struck of the roll or suspended from practice for a specified period.

[32] As reflected in the first respondent’s papers, she has practiced for a period of, at least, 20 years without any adverse findings recorded against her name. This was confirmed by the SCA where it was mentioned that:

‘In her favour the appellant has been an attorney for over 20 years with an unblemished record until now. She reported the misconduct to the Law Society well knowing of the consequences for herself. She fully co-operated in her subsequent investigation. The *curator bonis* appointed by the Law Society observed in November 2016 that the firm was well-managed by the appellant and that she was doing her best to make good the shortfall.’¹⁰

[33] From the above judgment and the circumstances of the matter, it is clear that the fact that first respondent acted unprofessionally should not lead to her automatic removal from practice. I am sensitised to the extent of the misappropriation and her part in the misappropriation. Also, whether she acted dishonestly or negligently, whether the money from trust fund could be recovered as well as her history and disciplinary record.

[34] When deciding on duration and whether suspension is warranted, courts would consider the extent of the delay in reporting misappropriation whether the failure was malicious, negligent, or inadvertent, the amount of misappropriated funds, the potential harm to clients or third parties and the pattern of previous misconduct by the practitioner. Lastly the likelihood of rehabilitation would be considered.

¹⁰ *Op cit* fn 1 para 36.

[35] On a practical approach and having regard to cases like *South African Legal Practice Council v Matee* and earlier authorities, the suspension duration in cases of non-reporting or delayed reporting where serious loss or continued misuse occurred is one year suspension.¹¹

[36] The first respondent was a good and credible witness. She was clearly embarrassed to appear in a court of law to defend her dignity and reputation. In evaluation of the first respondent's evidence, it was evident that she was fully aware of her responsibilities and the standard of conduct required of her. She accepted that, as a co-director of the firm, she was expected to act decisively and assertively in the discharge of her duties. She explained that, at the relevant time, her emotional state – stemming from the deterioration of her marriage, concern for the well-being of her minor child, the interests of her clients, and the broader consequences of the situation, adversely affected her capacity for clear and rational thought.

[37] In light of the SCA concerns regarding the applicant's knowledge of the misconduct and the period during which she was aware of it, this Court has carefully evaluated the testimonies of the first respondent and the witness. It is evident that the first respondent provided a satisfactory explanation for the gaps in her initial evidence. In exercising its discretion, and having regard to the relevant case law and the LPC directives governing the striking off of an attorney, the Court must determine what is reasonable and just in the circumstances, including whether the sanction imposed was appropriate. On a careful assessment of all the circumstances, the Court must conclude that a suspension would be a sufficient and proportionate sanction.

[38] The applicant submits that if this Court considers a suspension, that an additional order must be added that she undergoes rehabilitative training, like the Legal Practice's PC practice-management-focused training.

[39] This Court is satisfied that, upon the expiry of the period of suspension, the first respondent would, in the ordinary course of events, be fit to practice as an attorney. She has already not practiced for a period of ten years since the initial order of this Court.

¹¹ *South African Legal Practice Council v Matee* [2024] ZAFSHC 183.

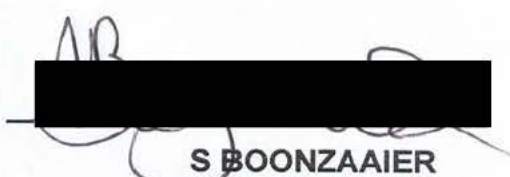
Taking into account the nature and extent of her involvement, it is just and appropriate to make the following order:

1 The order of the High Court dated 15 December 2017 is set aside and replaced with the following:

1.1 The first respondent is suspended from practice for a period of one year.

1.2 The period of suspension is to be retroactively effective from the date of the original decision on 15 December 2017.

1.3 The applicant is ordered to pay the costs of the proceedings on 28, 29 and 31 October 2025 and 11 December 2025 which costs to include the costs of counsel to be taxed on Scale C.'


S BOONZAAIER

ACTING JUDGE OF THE HIGH COURT

I concur and it is so ordered.


P J LOUBSER

JUDGE OF THE HIGH COURT

Appearances

For the applicant: N Snellenburg SC

Instructed by: The Law Society of the Free State, Bloemfontein

For the first respondent: H Cilliers SC

Instructed by: Stander Attorneys, Bloemfontein.