



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

Not reportable

Case no: 5111/2025

In the matter between

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

PATRICIA PHUTHI

RESPONDENT

Neutral citation: *South African Legal Practice Council v Phuthi* (5111/2025) [2026] ZAFSHC 231 (8 April 2026)

Coram: VAN ZYL *et* REINDERS JJ

Heard: 26 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand-down is deemed to be 08 April 2026.

Summary: Application for suspension from the roll of attorneys – non-compliance with s 84 of the Legal Practice Act 28 of 2014 – application withdrawn – cost order.

ORDER

- 1 The applicant withdraws the application.
 - 2 Each party is ordered to pay its own costs.
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JUDGMENT

Reinders J (van Zyl J concurring)

[1] On 25 September 2025 the applicant, the Legal Practice Council of South Africa (LPC), issued this application praying for the suspension of the respondent from the roll of legal practitioners of South Africa until such time as a Fidelity Fund Certificate (FFC) has been issued to her, alternatively '... until she has winded down her firm, ...'. Ancillary relief in the usual form was also sought in the notice of motion. The respondent was admitted as an attorney of this Division on 14 July 2016 and practiced as such as sole proprietor in the name and style of Phuti NP and Associates Inc. She opposed the relief claimed and represented herself herein.

[2] I do not deem it necessary to extensively deal with the merits of the application, save to the extent necessary for the purpose of considering an appropriate cost order, as the LPC upon our enquiries and with counsel acting for the applicant responsibly having obtained instructions to do so, had formally withdrawn the application. However, counsel had received pertinent instructions that the LPC persisted with the cost order prayed for, namely that the respondent be ordered to pay the costs of the application on an attorney and client scale. The respondent, on the other hand, pressed on us to award a punitive cost order against the LPC, averring that the latter had been mala fides in moving the application, for several reasons.

[3] As mentioned, in the main the LPC complained that the respondent had failed to obtain a FFC for the year 2025 in contravention of s 84(1) of the Legal Practice Act 28 of 2014 (the LPA) at the time when the founding affidavit had been deposed to. Added hereto, the LPC submitted that the respondent failed to comply with the s 84 of the LPA or rule 54.31 of the LPC rules by failing '... to submit a closing trust audit report of her firm and address to the audit queries.' The respondent in her answering affidavit confirmed not having practiced since early 2025, but submitted that she had been transparent by informing the

LPC of the constraints regarding her ill-health and subsequent financial difficulties to gainfully operate as a practicing attorney and pay for the mandatory audited trust reports. She explained that she had always been actively ensuring that the interests of the public were protected and served as was evidenced by the fact that no complaints had ever been received from the public against either her law firm or herself. The respondent, amongst others, complained that the LPC had attached an unsigned and un-commissioned confirmatory affidavit of the Director of the Free State Office of the LPC. In this regard I may add in passing that this was in fact the position in the papers in the court file upon receiving the same. In reply, the LPC again stressed that the respondent had contravened several provisions of the LPA.

At the time when the application served for final adjudication before us, we were informed the contraventions by the respondent had been remedied, save for an outstanding amount still due by the respondent in respect of annual fees and the like which we were not called upon to make any orders. The LPC had, prior to this date, informed the respondent that the matter would be removed from the role on the basis that she would still be liable for the costs incurred. Heavy reliance was placed by the LPC on *Botha v Law Society, Northern Provinces*¹ for the contention that the LPC is entitled to costs, even if unsuccessful and, so the argument went, '... usually on an attorney and client scale'.

[4] The LPC in its founding affidavit stated the purpose of the application to be '... to protect the public interest by ensuring that a legal practitioner who is practicing as an attorney, whose rendering of legal services inherently entails the receiving and holding of trust funds, is presently practicing without a Fidelity Fund certificate in contravention of s84 of the Act and to the grave prejudice of the unsuspecting members of the public whose trust funds she continues to receive and hold'. The respondent in her answering affidavit confirmed that she is not practicing anymore, is in the process of winding down her firm, is not in '... in possession of any trust monies or plan to receive such any time in the future', that her trust account statements sent to the LPC indicated that same has 'always been dormant' and that she has 'never received any monies or kept any monies on behalf of any client'. The latter averments, as well as the fact that there have never been any complaints from the public received against her, were not seriously disputed by the LPC. Although the respondent conceded that she was in breach of her statutory duties as an attorney, a holistic view of the papers does not paint a picture of intentional harm to the public. In fact, the

¹ *Botha v Law Society, Northern Provinces* [2008] ZASCA 106; 2009 (1) SA 227 SCA.

respondent stated under oath that she was aware of her constraints and acted in accordance with her oath by informing the LPC thereof. The parties were at loggerheads with each other, not only on the papers and in their heads of arguments, but also in oral submission before us. Eventually, the application was withdrawn. We are not of the view that the LPC acted mala fides in bringing this application. However, in view of what has been stated herein above and in exercising our discretion, we deem a cost order where each party should bear its own costs, to be appropriate under the circumstances.

[5] Accordingly, the following order is issued:

- 1 The applicant withdraws the application.
- 2 Each party is ordered to pay its own costs.

I concur.


C REINDERS
JUDGE OF THE HIGH COURT


C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:

K. P Mohono

Instructed by:

Mohobo Attorneys, Bloemfontein

For the Respondent:

P Phuthi

Instructed by:

In person