



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 105187/25

In the matter between

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL APPLICANT

AND

DAVE CLIVE MAROON

RESPONDENT

CORAM: MANTAME J; THULARE J.

Heard on: 26 NOVEMBER 2025 & 27 JANUARY 2026

Delivered on: 11 MAY 2026

JUDGMENT

THULARE J

ORDER

- (a) The findings and sanctions of the South African Legal Practice Council Disciplinary Committee (the DC) in this matter are set aside.
- (b) The matter is remitted back to the South African Legal Practice Council (the LPC) to consider the disciplinary steps against the respondent afresh before a DC constituted by different persons.
- (c) No cost order is made.

[1] This is an opposed application wherein the applicant sought an order that the respondent be struck from the roll of legal practitioners of this court and that he immediately surrender and deliver to the registrar of the court his certificate of admission and/or enrolment as an attorney and/or legal practitioner of this court, including all ancillary offices which the enrollment as an attorney allowed, as well as payment of the fines and compensation specified by the DC, to pay expenses relating to the publication of the court order sought and costs of this application.

[2] In the main, the opposition to the application is found on the procedure adopted by the DC and how the LPC also later dealt with that charge. In his answering affidavit the respondent indicated that he, out of own volition, set out some facts during his plea explanation to the two charges preferred against him. It was on these facts that the DC there and then amended the charges and included charge 3. The facts which found charge 3 related to withdrawal of monies from funds held in an estate late account. The respondent alleged that the charge was never put to him and that he did not plead guilty thereto. The respondent also raised issues around the procedure of sanctions, especially the decision to apply for his being struck off, as well as other points in limine which

included the pending appeal, the LPC departure from the sanctions recommended by the DC and the timelines related to the application to strike off

[3] Rule 41 of the Rules issued in terms of sections 95(1), 95(3) and 109(2) of the Act [Legal Practice Act, 2014 (Act No. 28 of 2014) (the LPA)] provides:

41 Disciplinary procedure

41.1 A disciplinary enquiry shall be commenced by way of a notice to the respondent requiring the attendance of that respondent at the enquiry before a disciplinary committee. The notice shall be sent by pre-paid post or by email or facsimile transmission, or shall be delivered personally, and the enquiry shall proceed if the committee is satisfied that the notice has been received by the respondent.

41.2 The notice shall be issued under the hand of the executive officer or the legal officer or some other duly authorised employee of the Council and shall be served not less than 10 days before the date appointed for the hearing, in the computation of which period weekends and statutory public holidays shall be excluded.

41.3 The notice shall set out the place, date and time of the hearing and shall contain the charge or charges of unprofessional, or unworthy or dishonourable conduct alleged against the respondent.

Section 39 (6)(a)(v) and 6(b)(i) of the LPA provides:

(6) At a hearing the person charged-

(a)

(v) may cross-examine any person called as a witness in support of the charge;

(b) (i) may admit at any time before conviction that he or she is guilty of the charge;

and

(ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of misconduct as charged.

[4] The respondent was served with a notice of a disciplinary hearing setting out two charges. The two charges were ~~put~~ put to the respondent at the hearing. The respondent admitted guilt to the two charges put to him. The first charge related to his failure to respond to the LPC correspondence. The second charge related to paying out the executor's remuneration of R68 984-70 to himself prior to lawfully being entitled to do so. It is to these two charges that the respondent was asked to plead. The respondent pleaded guilty to both. In respect of the second, he gave an explanation that the Master of the High Court was aware, but that he proceeded with the administration of the estate as a duly appointed executor.

[5] Charge 3 was for all intents and purposes introduced by the ~~respondent~~ members of the DC personally. It is preferable to refer to the transcript as to how this charge unfolded at the enquiry. The members of the DC were A Pittman as Chairperson, L Eli and C Jeffries. B Gain was the complainant present. The applicable parts of the transcript reads:

MAROON: ... Just as a further, sorry, I don't think the charge would have been complete, because there is further information that was obviously resurfaced after the complaint has been filed already. So, basically, when I submitted my documentation to the Master, [indistinct 0:03:29.2] as well, to today it has been paid up already. However, there was a, I'd say a misappropriation of funds from my side, where I withdrew funds that wasn't supposed to be withdrawn from the estate. I then repaid that funds back into the estate.

MR JEFFRIES: Is that the R54 000-00?

MR MAROON: No

MR JEFFRIES: How much is that?

MR MAROON: That was like R500 000-00 odd.

MR JEFFRIES: R500 000-00?

MR MAROON: That's not included in this charge, because obviously the charges were brought before that came to light.

MR JEFFRIES: Okay

MR MAROON: Obviously, you know, things are paid up, obviously. I then, what happened was I then paid the money back into the estate so that [indistinct0.04:11.1] There was that kind of to and fro [indistinct0.04:12.7] from my side, because knowing that I was ... I needed to pay then back, I then got the funds and I paid the money to him. So, that is not included in this . Just from my side – [interrupted]

[crosstalk 0.04:31.1]

CHAIRPERSON: **We must add another charge.**

MR JEFFRIES: [indistinct0.04:36.4] So, the charge will be that you misappropriated the sum of at least R500 000-00 [crosstalk 0.4:50.2] and that some time thereafter you repaid the money – [9nterrupted].

MR MAROON: Yes.

MR JEFFRIES: into the estate.

[Emphasis added]

[6] There was no proper investigation by the investigating committee, on the complaint lodged by Ms Gain, with specific reference to bank statements that underpinned charge 3. If there was, charge 3 would have been part of the notice served on the respondent. From the transcript, it cannot be said that the DC also considered the evidence, in particular the bank statements in any detail either before or during the framing of charge 3 against the respondent or before the pronouncement of their findings at the hearing, if the bank statement were before them at that stage. Counsel for the applicant in their heads of argument concludes that the DC was only able to consider the bank statements provided by the respondent in any detail after the disciplinary hearing [para 9.11 of their Heads of Arguments (HOA)].

[7] The argument in 9.13 of the HOA, reads:

9.13 as a result of the above submission, the LPC disciplinary committee added a third charge as follows:

Charge 3

In that he contravened clause 3.15 of the Code of Conduct of the LPA in that he brought the legal profession into disrepute in that he misappropriated the amount of R560 550 000-00 which was transferred from the Estate Late WM Lewise bank account into the trust account of DC Maroon Attorneys from 2019 to 2023.

The greatest challenge with these submissions is that they are mainly premised on 9.12 of the HOA. The whole of 9.12 of the HOA, and a substantial part of the facts upon which the LPC relied, is based on information which was only established when the bank statements were considered in detail after the disciplinary hearing. It was information, which was not uncovered by the investigation committee, and was unknown to the disciplinary committee, except that which the respondent volunteered. This is also expressly said by the Chairperson of the DC when he announced the finding of guilt and the sanction on that charge. The difference in the amounts on charge 3 in the transcript and in charge 3 in 9.13 of the LPC's HOA is a classic example. Charge 3 was not contained in the notice served on the respondent as envisaged in Rule 41.3 cited above.

[8] Jeffries in the transcript [at the bottom of page 9] and Counsel for the LPC [para 38 of HOA] indicated that the respondent pleaded guilty to charge 3. I have carefully considered the transcript and have been unable to locate where charge 3 is put to the respondent, and where the respondent pleads guilty to count 3. From my reading, the respondent made an explanation of plea in

respect of charges 1 and 2 which were put to him, to which he pleaded guilty. During that explanation, he made statements which found the construction of charge 3 by the DC. The transcript indicates that the charge was formulated but did not indicate that the charge was ever put to him to plead thereto. Instead of taking his plea thereto, he was asked further questions it seems in seeking clarity on his plea explanation. Whilst the failure to put a charge and to take a plea is a problem, something more worrying happened.

[9] The transcript reads:

MR JEFFRIES: So we haven't got to the stage of swearing you in, because we were just doing charges. And we've done three charges now, which you have admitted guilt on. So there's, I don't think there's really any need for us to swear you in, unless there's anything that you've said that you dispute, then we need to, I need to swear you in, you give your evidence, then he'll give his evidence is contrary to that, What he said is pretty much what's happened here.

MRS GAIN: It is pretty much what happened here. Instead, he got go-ahead in January. He paid the heirs in different parts. And if you look at ...

CHAIRPERSON: January of 24, this year?

MRS GAIN: This year, yes. In January of 24. He had two estate late accounts for my mom. He said the first one went dormant. And I said to him, in the Masters Office, an account, an estate late account, has a longer lifespan, and the master then agreed with him that oh he phoned me from the bank ...

This is how Mrs Gain entered the record. There was no oath or affirmation for her evidence. Section 38(4)(b) of the LPA reads:

38 Procedure for dealing with complaints of misconduct and procedure to be followed in disciplinary hearing

(4) (b) The complainant in the matter is entitled to be present during all proceedings in a disciplinary hearing relating to his or her complaint in the same manner as a complainant in criminal proceedings.

Section 162 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA) provides:

162 Witness to be examined under oath

(1) Subject to the provisions of sections 163 and 164, no person shall be examined as a witness in criminal proceedings unless he is under oath, which shall be administered by the presiding judicial officer or, in the case of a superior court, by the presiding judge or the registrar of the court, and which shall be in the following form:

'I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God.'

(2) If any person to whom the oath is administered wishes to take the oath with uplifted hand, he shall be permitted to do so.

Whilst she was invited into the record by Mr Jeffries, Mrs Gains evidence was for all intents and purposes led by the chairperson. Mrs Gain was never placed under oath or affirmation as a witness. The respondent was not given any opportunity to cross-examine her as envisaged in Rule 41.4.5, as a person called in support of the charges. The respondent was further questioned by the chairperson based on the evidence of Mrs Gain, and Mrs Gain gave further information, which was not under oath and was considered by the DC in the determination of both the guilt and sanction of the respondent. This was irregular and an irregularity which went into the heart of the fairness to the respondent.

[10] Whilst the Chairperson was engaged in seeking information from Mrs Gains, the Chairperson and Mrs Gains simply veered into the pre-sanction process. The transcript reads:

CHAIRPERSON: I think we got quite far today, I think you should be happy with –
[interrupted]

MRS GAIN: No, I am. I am.

CHAIRPERSON: ... the progress that we got here.

MRS GAIN: No, I am.

CHAIRPERSON: Hes a non-practising attorney, we can't strike him off the roll. We can actually.

PROSECUTOR: Yeah, we can.

MRS GAIN: Hes not supposed to practise, he will do it to someone else.

PROSECUTOR: Do you ... Mr Maroon, sorry, can I ask him a question. Do you have any intention to continuing as an attorney in the future?

MR MAROON: That is an option that I would like to pursue still, but obviously not right now I'm still working through some stuff. I would approach the ... So, actually, I was busy in the process deregistering the practice, I'm not sure if you know But I .. so I'm –[interrupted]

CHAIRPERSON: I see, that's why hes here.

MR MAROON: So, I deregistered the practice about a month ... like well, in terms of well, I was [indistinct 0.22:30.7] on a non-practising role since [indistinct 0.22;34.8] They informed me that there's certain things that I still didn't do.

PROSECUTOR: The closure requirements. Yes?

It is in the discussion where the respondent was advised by the Chairperson that the DC was going to decide on a sanction and that the LPC would let the respondent know what the decision was. Five exchanges later in that discussion the Chairperson announced that the respondent was found guilty of the three charges, and the sanction was also announced. In respect of charge 3, the Chairperson said:

The third charge, which the committee added after the evidence from the respondent, in that the respondent admitted misappropriating at least the amount of R500 000-00 from the estate bank account, for his personal use, prior to being authorised to do so, and over a period of

time from February 2023 to approximately July 2024. However, these funds have been repaid and the heirs have been paid in full, the committee believes that he should be .. receive a sanction of R5000 being suspended from the role for non-practising attorneys, for a period of five years.

[11] Section 40 of the LPA, cited hereinafter, makes a clear distinction between the hearing into whether a respondent is guilty of misconduct, and the further hearing on the determination of an appropriate sanction. The relevant provisions read as follows:

40 Proceedings after disciplinary hearing and sanctions

(1) (a) After the conclusion of a hearing a disciplinary committee must, within 30 days, decide whether or not the legal practitioner, candidate legal practitioner or juristic entity is guilty of misconduct.

(b) If a disciplinary committee finds that the legal practitioner, candidate legal practitioner or juristic entity is guilty of misconduct it must-

(i) inform the legal practitioner, candidate legal practitioner or representative of the juristic entity and the Council and Provincial Council of the finding; and

(ii) inform the legal practitioner, candidate legal practitioner or representative of the juristic entity of the right of appeal as provided for in terms of section 41.

(2) A legal practitioner, candidate legal practitioner or representative of a juristic entity found guilty of misconduct in terms of this section may-

(a) address a disciplinary committee in mitigation of sentence; and

(b) call witnesses to give evidence on his or her behalf in mitigation of sentence.

(3) If found guilty of misconduct, the disciplinary committee concerned may call witnesses to give evidence in aggravation of sentence and may-

(a) in the case of a legal practitioner-

(i) order him or her to pay compensation, with or without interest to the complainant, which order is subject to confirmation by an order of any court having jurisdiction in the circumstances in the prescribed manner, on application by the Council;

(ii) impose upon him or her a fine, payable to the Council, not exceeding the amount 1 determined from time to time by the Minister by notice in the *Gazette*, on the advice of the Council;

(iii) temporarily suspend him or her from practising or from engaging in any particular aspect of the practice of law, pending the finalisation of an application referred to in subparagraph (iv) *(bb)*;

(iv) advise the Council to apply to the High Court for-

(aa) an order striking his or her name from the Roll;

(bb) an order suspending him or her from practice;

(cc) an interdict prohibiting him or her from dealing with trust monies; or

(dd) any other appropriate relief;

(v) advise the Council to amend or endorse his or her enrolment;

(vi) order that his or her Fidelity Fund certificate be withdrawn, where applicable;

(vii) warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or

(viii) caution or reprimand him or her;

From the transcript, the DC did not first pronounce itself on the determination of whether the respondent was guilty of misconduct as envisaged in section 40(1) of the LPA, which it was enjoined to do. The DC did not allow the respondent to address it on mitigation and did not allow the LPC to address it on aggravation. The pre-sanction process envisaged in section 40(2) and (3) of the LPA was simply not observed. This was also a irregular, which irregularity impacted on the fairness of the process, especially to the respondent.

[12] A transcript of a disciplinary hearing conducted by a Disciplinary Committee of the South African Legal Practice Council must, when read by a university law student, teacher of law, employer, union representative and any other interested party, in itself serve as some form of study guide on how such a process demonstrates the formalities of such forums and how the management and application of discipline translates into substantive and procedural justice, upholding the dignity, equality, and fairness of and in the legal profession. In a country with a workplace culture and history such as ours, such transcript must be able to serve as an enhanced legal literacy programme to educate others about the responsibilities and rights of the different role players, especially for vulnerable workers with limited legal resources.

[13] In this matter, one cannot dismiss the uneasy sense that it appears that the LPC reduced a disciplinary committee and its functions into some pro forma ritual, and that the actual work of a full investigation only started after the DC process, with what may appear as a predetermined outcome, in respect of charge 3. In these circumstances, a court cannot simply play along when the conduct of a DC and the processes that followed has the tendency to erode the legitimacy of a disciplinary process of a legal practitioner, where such practitioner was denied genuine participation on a serious charge, which charge sounds in misappropriation of funds in a late estate account. Fairness in a process include that the legal practitioner must have a genuine opportunity to be heard.

[14] The fulfilment of the functions of the investigation committee and the disciplinary committee of the LPC are not merely procedural rituals to be performed and the relevant box ticked. They are the building blocks linked to dignity, equality and democracy and the foundations on which the constitutional

guarantees are built in the disciplinary process of a legal practitioner [*Legal Standards vs Practical Application: An Analysis of the Right to Fairness in Disciplinary Hearings in South Africa* Xoliswa Jwili, 28th Annual Conference of the South African Society for Labour Law, Gqeberha, 17-18 September 2025]. The failure to discover malfeasance by an investigation committee, and the absence of facts known to the LPC at the time of the disciplinary hearing, from which to accept that there was a confession and to ground a finding of guilt on misconduct, cannot be subsequently covered by some footwork done by creative beings at the LPC after the DC has done its job. It is simply unfair not only to the practitioner but to the courts, for the LPC to then seek the court to impute the work done after the DC, to the DC. I am not persuaded that there was an opportunity for what is called a preceding opportunity for dialogue and reflection [*Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation, Mediation and Arbitration and Others* 9 BLLR 833 (LC); 27 ILJ 1644(LC) (14 March 2006)] between the LPC and the respondent in respect of charge 3. The procedural fairness of the disciplinary proceeding of the LPC is regulated by the LPA. Where the application of discipline was not consistent with the LPA, the departure must be measured against the principle of fairness to pass the test of acceptance.

[15] Dealing with a statute at the time, the learned author said the following which I find very helpful in this matter:

In view of the express provisions of our statute to the contrary, it is clear that it is not essential that there should be evidence outside the confession to establish its genuineness before a court can convict. There can be no doubt, however, that the most satisfactory evidence proving the genuineness of a confession is evidence outside the confession itself, and better still if that evidence confirms the confession in a material particular; but this is not a necessary requirement and there may often be cases where the very nature of the confession itself is sufficient to establish its genuineness.

[*Confirming the genuineness of a Confession*, CL Mercer, The Rhodesian Law Journal, p 104-109 at page 5]. Where the alleged misconduct is so serious as to warrant the striking off of the name of the respondent from the roll of practitioners and has the tendency to affect his capacity to practice law in the country either temporarily or permanently, it is preferable that the LPC strives to secure evidence outside the confession, which confirms the confession in a material way for its genuineness, as part of its case in the disciplinary process.

[16] Section 40 of the LPA does not expressly provide for the power of the DC, in appropriate circumstances, to recommend to the Council that a matter already before the DC be referred to the investigation committee for further investigation before the DC proceeds with its work. Section 39 of the LPA also deals with admissions, and not confessions. The DC does not hold a trial, but a hearing. The structure of the LPA and its Regulations, as regards disciplinary proceedings, leaves me with the impression that the process is hybrid. It has the accusatorial and inquisitorial system of fact finding and adjudication in one. The system is inherently based on the African philosophy of conflict resolution which is hybrid, practised throughout indigenous civilizations. The DC is a legal construct and can only exercise those powers which those who brought it into being intended it to have. However, when interpreting the rules, constitutionally, the law requires some flexibility [*Hamata and Another v Chairperson, Peninsula Technikon Internal Disciplinary Committee and Others* (1) 2002 (5) SA 449 (SCA) at para 19]. The court in *Hamata* continued at para 19 and said:

... the absence of any express provision in the rules conferring a discretion does not matter. The question is rather whether there is sufficient indication in the rules that any such residual discretion on the part of the IDC was intended to be excluded.

In this matter, the answer in my opinion is that there is not.

[17] The interests of justice, once the DC was surprised by a confession of a respondent in respect of which it had no evidence outside the confession itself to establish its genuineness before it could find the respondent guilty of misconduct, or at least satisfactory evidence outside the confession itself that confirmed the confession in a material way, the facts favoured the DC to exercise its residual discretion and refer the matter back for the charge founded by the confession to be properly investigated before the DC continued with the disciplinary process in respect of that charge. I am not persuaded that the decision of the DC, under the circumstances, should stand. For these reasons I would make the order.

DM THULARE
JUDGE OF THE HIGH COURT

I agree it is ordered

B MANTAME

JUDGE OF THE HIGH COURT