IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not Reportable

Case Number: 1583/2025

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL	**Applicant**
and	
SCHALK WILLEM BOTHA	**Respondent**

Coram: Petersen ADJP and Reddy J

Date enrolled: 20 March 2026

Judgment reserved: 20 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 08 May 2026.

Summary: Legal Practice Act 28 of 2014 — Application for removal from roll of legal practitioners — Respondent consents to removal — Opposition limited to costs and condonation — Failure to lodge audit reports for ten consecutive

years — Failure to hold Fidelity Fund Certificates for ten consecutive years — Failure to pay membership fees — Respondent's claim that he resigned from the Law Society of the Northern Provinces in December 2015 — Effect of automatic transfer of membership to LPC — No documentary proof of prior resignation — Condonation for late filing of answering affidavit granted — Costs — Whether standard attorney-and-client costs order appropriate where respondent co-operates, consents to removal, was sequestrated, and made sustained settlement overtures that were met with dilatory response — Party-and-party costs ordered.

JUDGMENT

REDDY J

Introduction

[1] This is an application by the South African Legal Practice Council ('the LPC') for the removal of the name of Schalk Willem Botha ('Botha') from the roll of legal practitioners. Alternatively, the LPC seeks his suspension from practice. The application is brought in terms of the Legal Practice Act 28 of 2014 ('the LPA').

[2] The complexion of this matter is unusual. Botha filed an answering affidavit consenting to the removal of his name from the roll. His opposition pivots on two issues, first, condonation for the late filing of his answering affidavit and second, the costs of the application. The substantive merits are accordingly not in dispute.

[3] The costs issue raises questions that warrant careful analysis. Botha contends that he applied for removal from the former Law Society of the Northern Provinces in December 2015, has not practiced as an attorney since, was

subsequently sequestrated, and has made sustained efforts to settle this application since at least August 2025. The LPC disputes that a valid resignation was ever effected and bolsters its costs claim by invoking the general principle that an attorney-and-client order is standard in applications of this nature.

Botha's background

[4] Botha was admitted and enrolled as an attorney in the then Gauteng Division of the High Court on 26 March 1985. He practiced at various law firms from 1 May 1985 to 14 June 2012. Subsequently, he commenced practice as a sole practitioner under the name 'Botha Attorneys', operating from Farm Vlakpan, Jagersfontein, Mahikeng. His name remains on the roll of legal practitioners of this Court.

Nature of these Proceedings

[5] Applications of this nature are *sui generis*. There is no *lis* between the parties. The LPC acts as the guardian of the honour and integrity of the legal profession, placing facts before the Court so that the Court may exercise its inherent disciplinary jurisdiction over its officers. The Court acts in the public interest.[1]

[6] A three-stage enquiry governs these applications. First, the Court determines whether the alleged offending conduct has been established on a balance of probabilities. Secondly, it makes a value judgment on whether the person is not a fit and proper person to practise. [2] Thirdly, it determines whether

[1] *Hassim v Incorporated Law Society of Natal* 1977 (2) SA 757 (A) at 767C–G; *Law Society Transvaal v Matthews* 1989 (4) SA 389 (T) at 393F; *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 851E–F.

[2] *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A) at 637C–E; *A v Law Society of the Cape of Good Hope* 1989 (1) SA 849 (A) at 851A–E.

the appropriate sanction is removal from the roll or suspension from practice, which is ultimately a question of degree.[3]

Procedural History

[7] The application was launched by notice of motion dated 13 March 2025 and mailed to Botha on 5 May 2025. Notwithstanding an initial unsuccessful attempt at personal service, it was served on Botha personally by the sheriff on 12 August 2025.

[8] On 1 December 2025, Botha, through LFS Attorneys Incorporated, filed a notice of intention to oppose and a notice to mediate in terms of Rule 41A of the Uniform Rules of Court. The LPC opposed mediation.

[9] The matter was enrolled for hearing on 20 February 2026. On 4 February 2026, Botha filed a combined condonation application and answering affidavit. The LPC filed its replying affidavit on 13 February 2026. On 16 February 2026, LFS Attorneys Incorporated withdrew as attorneys of record.

[10] At the hearing on 20 February 2026, Botha was absent from the virtual platform. The matter was postponed to 20 March 2026 to ensure Botha received proper direct notice. On 24 February 2026, the Judge's Registrar emailed Botha the court order and the new hearing date. The matter proceeded on 20 March 2026. Botha was not on the platform via the MS Teams link, which had been made available to him.

Condonation for Late Filing of the Answering Affidavit

[11] Before turning to the merits, the issue of condonation falls to be determined. Botha's answering affidavit was filed on 4 February 2026, well after

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[3] *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) at 51B–I; *Law Society of the Cape of Good Hope v Budricks* 2003 (2) SA 11 (SCA) at 13I–14B; *Summerley v Law Society Northern Provinces* 2006 (5) SA 613 (SCA) at 615B–F; *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 at [9].

the period contemplated in the notice of motion. He seeks condonation for the late filing. Botha explains that from August 2025, his attorneys were engaged in settlement discussions with the LPC's attorneys and had been requested to hold their file pending the LPC's instructions, which never came. The LPC indicated that it does not oppose the granting of condonation, while maintaining that no adequate case for condonation was made out.

[12] The applicable test governing condonation is well established. In *Melane v Santam Insurance Co Ltd*[4], Holmes JA held that the Court has a discretion whether to grant condonation, to be exercised having regard to: the degree of non-compliance; the explanation therefor; the importance of the case; the respondent's prospects of success on the merits; Botha's interest in finality; the convenience of the Court; and the avoidance of unnecessary delay in the administration of justice. These factors are not individually decisive; they must be weighed holistically. In *Minister of Health and Another v Treatment Action Campaign and Others (No 1)*[5], the Constitutional Court confirmed that condonation should not be withheld where the interests of justice favour the matter being decided on the merits, particularly where the delay has not prejudiced the other party.

[13] The correspondence trail attached to the answering affidavit reflects a genuine attempt at settlement from August 2025 and a reasonable, if misplaced, expectation that the LPC's attorneys were processing a response. We are persuaded that a satisfactory explanation for the delay exists. The delay caused the LPC no material prejudice, as the LPC was able to file a replying affidavit. The interests of justice are best served by having Botha's version on record, particularly in view of the disputed costs question. Condonation is granted. It follows that Botha's answering affidavit is properly before the Court.

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[4] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C–E.
[5] *Minister of Health and Another v Treatment Action Campaign and Others (No 1)* 2002 (5) SA 703 (CC) at para [8].

The Alleged Misconduct

Failure to lodge audit reports and to hold Fidelity Fund Certificates

[14] Botha failed to lodge unqualified audit reports for the periods ending February 2015 through February 2024, a total of ten consecutive years. As a direct consequence, he was not issued with Fidelity Fund Certificates for the years commencing January 2016 through January 2025. During this period Botha was not entitled to practice for reward, and both his clients and the Legal Practitioners' Fidelity Fund were exposed to risk. This conduct contravenes sections 84(1) and 84(2) of the LPA and Rules 54.23, 54.24 and 54.29 of the LPC Rules.

[15] It is also recorded that Botha failed to attend two Disciplinary Committee meetings convened in respect of his non-compliance.

Failure to pay annual membership fees

[16] Botha failed to pay annual membership fees to the LPC in the total amount of R33 182.00, in contravention of Rules 4.1 and 6 of the LPC Rules read with Clause 3.16 of the Code of Conduct.

Failure to respond to LPC correspondence

[17] Botha failed repeatedly and systematically to respond to correspondence from the LPC, in contravention of Clauses 16.1, 16.2 and 16.3 of the Code of Conduct.

Discussion and Findings

Establishment of the offending conduct

[18] Botha consents to the removal order and does not dispute the misconduct. The founding affidavit stands unchallenged on the merits. On the conspectus of the evidence, Botha has failed to lodge unqualified audit reports for ten consecutive years, has practiced without Fidelity Fund Certificates for the same period, and has failed to pay membership fees totalling R33 182.00. We are

satisfied that the offending conduct has been established on a balance of probabilities.

Fitness to practice

[19] The failure to lodge audit reports and to hold Fidelity Fund Certificates for ten consecutive years represents a profound and sustained dereliction of the most fundamental obligations of a legal practitioner. The regulatory framework governing these requirements exists precisely to protect clients and the public. A practitioner who ignores these obligations for a decade, whatever the subjective reasons, cannot be regarded as fit and proper. We are therefore satisfied that Botha is not a fit and proper person to practice as a legal practitioner.

Removal or suspension

[20] Botha consents to removal and does not seek a suspension in lieu. The duration of the non-compliance, ten uninterrupted years, and the scale of the regulatory defaults plainly exclude any lesser sanction. We are of the view that removal from the roll is the appropriate order.

Costs

The general principle

[21] The starting point is well established. Since these proceedings are *sui generis* and the LPC acts not as an ordinary litigant but as the statutory guardian of professional standards, it is, as a general rule, entitled to its costs. The rationale is that the LPC performs a public function and must be able to discharge it without bearing the financial risk of doing so.[6]

[22] In applications of this nature, the standard costs order is made on the attorney-and-client scale. Such an order reflects not only the *sui generis* character of the proceedings but also the public interest in maintaining the integrity of the

profession. The LPC underscores its costs claim with this general principle and seeks its costs accordingly.

Botha's contentions

[23] Botha does not dispute the LPC's entitlement to costs as such. Botha's case on costs is predicated on the following contentions. First, he claims to have personally attended the offices of the Law Society of the Northern Provinces in Pretoria in December 2015 and delivered all required notices and documentation to terminate his membership and cease practice. He thereafter relocated to a farm in the Mahikeng district and has not practiced as an attorney since. Second, he and his wife were sequestrated by this Court in July 2017, as confirmed by the sequestration order attached to his answering affidavit.

[24] Third, he had, since 2015, been under a bona fide belief that he had been properly removed from the roll and that the necessary regulatory steps had been taken. He has had no trust account, no clients and no files for approximately ten years. Fourth, from 18 August 2025, the day the application came to his attention through his attorneys, he took active steps to settle the matter without costs. To this end, his attorneys wrote to the LPC's attorneys on that date proposing that the LPC take its removal order without a costs order. They followed up on 04 September 2025, had a telephone consultation with the LPC's attorney on 8 September 2025, during which they were told to 'hold the file' while instructions were obtained. Additionally, further correspondence was sent on 10 September 2025, 26 September 2025, 15 October 2025, 20 October 2025 and 21 January 2026. Notably, none of this correspondence was substantively answered. Fifth, he is currently insolvent and has no means to pay the costs of this application.

The prior resignation from the Law Society of the Northern Provinces

[25] We first address Botha's claim that he duly resigned from the Law Society of the Northern Provinces in December 2015 and that this should relieve him of

accountability for the regulatory defaults. This argument must be assessed against the applicable statutory framework.

[26] Section 115(1) of the LPA provides that, upon the commencement of Chapter 2 on 1 November 2018, every person who was a member of any former law society immediately became a member of the LPC. The former law societies, including the Law Society of the Northern Provinces, ceased to exist on that date. The LPC is therefore not the Law Society of the Northern Provinces. It follows axiomatically that any steps Botha may have taken in December 2015 were directed at a predecessor body that no longer exists.

[27] Botha has produced no documentary evidence of the alleged notification. Simply put, no letter of resignation, no acknowledgement of receipt, and no correspondence from the former Law Society confirming the termination of his membership is before this Court. The LPC's records continued to reflect him as a practicing attorney throughout. Botha could, with relative ease, have obtained a closing audit report from his former auditors and procured documentary evidence of any communication with the former Law Society. Notably, none has been placed before the Court.

[28] Moreover, even if Botha notified the former Law Society of his intention to cease practice, that notification would not, of itself, have constituted a valid resignation from the profession or a removal from the roll. The roll is maintained by the court, and removal therefrom requires a formal court order. A practitioner cannot unilaterally remove himself from the roll by notifying an administrative body of his intention to cease practice. Botha's name has remained on the roll at all times.

[29] Even if this Court accepts at face value that Botha ceased active practice in December 2015, his regulatory obligations did not lapse merely because he stopped practicing. The obligation to lodge audit reports, to hold Fidelity Fund

Certificates, and to pay membership fees subsists for as long as a practitioner's name remains on the roll. The failure to discharge these obligations for over ten years is no less serious because Botha chose to jettison his practice without following the correct procedures for formal removal.

[30] Botha's *bona fide* belief that he had properly left the profession is misplaced and not a complete answer to the misconduct alleged. It does, however, have a bearing on his subjective culpability and on the costs discretion, to which we return below.

The LPC's dilatory response to settlement overtures

[31] The correspondence trail in the answering affidavit merits careful scrutiny. On 18 August 2025, within days of personal service, LFS Attorneys wrote to the LPC's attorneys, explained that their client was not practicing, outlined the basis for a proposed settlement, and specifically proposed that the LPC take its removal order without a costs order.

[32] That letter was not acknowledged until 2 October 2025, a delay of approximately six weeks. At that point, the LPC's attorneys merely asked Botha to put his position in writing, an exercise that had already been completed in the August letter. A further consultation occurred on 8 September 2025, during which the LPC's attorney asked Botha's attorneys to 'pend the file' while further instructions were obtained. Those further instructions never materialized.

[33] Botha's attorneys followed up on 4 September 2025, 10 September 2025, 26 September 2025, 15 October 2025, 20 October 2025, and 21 January 2026. The correspondence reflects a persistent, good-faith effort to avoid contested litigation. The LPC's response was to proceed with the application, file for a court date, and set the matter down, without engaging meaningfully with the settlement proposal.

[34] To this end, we make no finding that the LPC acted in bad faith. The LPC's attorneys may simply have been awaiting instructions that were slow in coming. The trickling nature of these instructions had a practical effect. Botha's attorneys were induced to hold their file for several months on the misconception that the LPC was considering their proposal. Whilst Botha lay in limbo, his proposal was never answered; the matter was already enrolled, and Botha was compelled to file an answering affidavit on extremely short notice. This sequence of events is relevant to the assessment of the costs order.

The appropriate costs order

[35] The LPC's entitlement to some costs order is not in dispute and cannot seriously be contested. The LPC was duty-bound to bring this application to fulfil its statutory mandate. The LPC is successful in the proposed relief sought. What stands out is that Botha's consent to his removal does not deprive the LPC of its entitlement to the costs incurred in bringing the proceedings.[7]

[36] The question is whether costs should be awarded on the attorney-and-client scale or the ordinary party-and-party scale. An attorney-and-client order is punitive in character. It goes beyond compensation for reasonably incurred costs, and either marks the court's displeasure or is intended to reflect that the party's conduct has been unreasonable, vexatious, or in bad faith. The *sui generis* character of these proceedings does not make an attorney-and-client order axiomatic or constrain the court's discretion. The scale of the costs order is within the court's discretion, to be exercised judicially, having regard to the conspectus of relevant circumstances.

[37] The following considerations weigh against an attorney-and-client order in this matter. First, Botha did not oppose the removal order. He consented to it from the outset of his answering affidavit. The entire litigation was contested only on

costs and condonation. A punitive costs order in these circumstances would, in effect, penalize Botha for something he did not oppose. Second, Botha has been sequestrated. A costs order will rank as a creditor's claim in his insolvent estate. Third, Botha operated under a genuine, if legally erroneous, belief that he had left the profession in December 2015. This belief is self-evident, given that he has resided on a farm in the Mahikeng district for approximately a decade, with no clients, no trust account, and no legal practice. His culpability, while not extinguished, is meaningfully different from that of a practitioner who continues to practice while consciously ignoring regulatory obligations. Fourth, Botha made genuine and persistent settlement proposals from August 2025. His attorneys communicated clearly that he was willing to submit to a removal order and sought only to avoid a costs order. The LPC's attorneys' protracted failure to respond substantively to those proposals prolonged the litigation and increased the costs.

[38] Against this backdrop, Botha's non-compliance spanned ten years. Even on his own version, Botha could, at any point during that decade, have taken the relatively simple step of applying to court for the formal removal of his name from the roll, or at the very least ensured that a closing audit report was lodged. Botha did not do so. It is inevitable that the regulatory defaults are not trivial.

[39] On a conspectus of these considerations, we are of the view that the appropriate order is costs on the party-and-party scale. This order recognises the LPC's entitlement to recover the costs of performing its statutory function, without visiting upon Botha the full punitive effect of an attorney-and-client order in circumstances where, (i) he consented to the substantive relief sought; (ii) he was sequestrated and held a genuine belief that he had ceased to be a member of the profession; and (iii) his settlement attempts were met with a protracted and dilatory response. An attorney-and-client order, in these particular circumstances, would be disproportionate.

Order

[40] As a result, the following order is made:

1. Condonation for the late filing of the Respondent's answering affidavit is granted.
2. The name of **SCHALK WILLEM BOTHA** is removed from the roll of legal practitioners.
3. The Respondent shall forthwith surrender and deliver to the Registrar of this Court his certificate of enrolment as a legal practitioner.
4. In the event of the Respondent failing to comply with paragraph 3 of this order within two (2) weeks of service thereof upon him, the sheriff of the district in which the certificate is located is authorised and directed to take possession of the certificate and to deliver it to the Registrar.
5. The Respondent is prohibited from operating on or handling the trust accounts referred to in paragraph 6 of this order.
6. SANELISIWE PRINCESS NGCOBO, Director of the North West Provincial Office of the Applicant, is appointed as curator bonis to administer and control the trust accounts of the Respondent, including accounts relating to insolvent and deceased estates and any estate under curatorship connected with the Respondent's practice, as well as any separate banking, savings or interest-bearing accounts operated by the Respondent in terms of sections 86(1), 86(2), 86(3) and/or 86(4) of the LPA ('the trust accounts'), with the following powers and duties:

6.1. immediately to take possession of the Respondent's accounting records, records, files and documents as referred to in paragraph 7 and, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, to sign all forms and generally to operate upon the trust accounts, but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the Respondent was acting at the date of this order;

6.2. subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control, where monies were paid incorrectly or unlawfully from the trust accounts, to recover such monies and, if necessary, to institute legal proceedings for their recovery;

6.3. to ascertain from the Respondent's records the names of all trust creditors and to call upon the Respondent to furnish, within 30 days of service of this order (or such further period as the curator may agree in writing), the names, addresses and amounts due to all trust creditors;

6.4. to call upon trust creditors to furnish such proof, information and affidavits as the curator may require to determine the validity and quantum of their claims, subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control;

6.5. to admit or reject, in whole or in part and subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, the claims of trust creditors, without prejudice to their right of access to the civil courts;

6.6. having determined the amounts lawfully due to trust creditors, to pay such claims in full, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

6.7. in the event of any surplus remaining after payment in full of all admitted claims, to apply such surplus firstly to any claim of the Fund in terms of section 86(5) of the LPA and secondly to the costs, fees and expenses referred to in paragraph 11 of this order, and to pay any remaining balance to the Respondent (if solvent) or to the trustee of his insolvent estate (if insolvent), subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

6.8. in the event of insufficient trust monies to pay all admitted claims in full, to distribute the available balance equitably amongst the trust creditors or to pay such balance to the Legal Practitioners' Fidelity Fund;

6.9. subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, to appoint nominees, representatives or consultants as may be necessary to assist in carrying out her duties; and

6.10. to render periodic returns to the Legal Practitioners' Fidelity Fund Board of Control showing how the trust accounts have been dealt with, until notified by the Board that her duties as curator are terminated.

7. The Respondent shall immediately deliver to the curator all accounting records, records, files and documents relating to:

7.1. any monies received, held or paid by the Respondent for or on account of any person while practising as a legal practitioner;

7.2. any monies invested by the Respondent in terms of sections 86(3) and/or 86(4) of the LPA;

7.3. any interest on such invested monies paid to or credited to the Respondent;

7.4. any deceased, insolvent or curatorship estate administered by the Respondent in any capacity;

7.5. any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act 57 of 1988;

7.6. any company or close corporation administered by the Respondent as or on behalf of a liquidator; and

7.7. the Respondent's practice generally, provided that the Respondent shall be entitled to reasonable access to such records subject to the supervision of the curator or her nominee.

8. Should the Respondent fail to comply with paragraph 7 of this order upon service thereof, or should service be impossible, the sheriff of the district in which the records are located is authorised and directed to search for and take possession of such records wherever they may be and to deliver them to the curator.

9. The curator shall be entitled to:

9.1. hand over to persons entitled thereto all records, files and documents upon receipt of a satisfactory written undertaking to pay any fees and disbursements due to the firm, either by agreement or in terms of a taxed bill of costs;

9.2. require from such persons such documentation or information as she considers relevant to any actual or anticipated claim against the Respondent, the Respondent's clients or the Fidelity Fund, provided that reasonable access and copying rights are afforded;

9.3. publish this order or an abridged version thereof in any newspaper she considers appropriate; and

9.4. wind up the Respondent's practice.

10. The Respondent is hereby removed from all offices to which his status as a legal practitioner was a prerequisite, including as:

10.1. executor of any estate appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965 or section 72(1) thereof;

10.2. curator or guardian of any minor or other person's property in terms of sections 72(1) and 85 of the Administration of Estates Act 66 of 1965;

10.3. trustee of any insolvent estate in terms of section 59 of the Insolvency Act 24 of 1936;

10.4. liquidator of any company in terms of section 379(2) read with section 379(e) of the Companies Act 61 of 1973, read with the Companies Act 71 of 2008;

10.5. trustee of any trust in terms of section 20(1) of the Trust Property Control Act 57 of 1988;

10.6. liquidator of any close corporation in terms of section 74 of the Close Corporations Act 69 of 1984; and

10.7. administrator appointed in terms of section 74 of the Magistrates' Courts Act 32 of 1944.

11. The Respondent shall pay:

11.1. the reasonable costs of the inspection of the Respondent's accounting records in terms of section 87(2) of the LPA;

11.2. the reasonable fees of the auditor engaged by the Applicant;

11.3. the reasonable fees and expenses of the curator, including travelling time;

11.4. the reasonable fees and expenses of any person engaged by the curator as provided for herein; and

11.5. the costs of publication of this order or an abridged version thereof.

12. The Respondent shall pay the costs of this application on the party-and-party scale.

13. If trust funds are available, the Respondent shall, within six (6) months of being requested by the curator to do so (or such longer period as the curator may agree in writing), satisfy the curator by means of taxed bills of costs or otherwise as to the fees and disbursements due to him in respect of his

former practice. Failure to do so shall disentitle the Respondent to recover such fees and disbursements from the curator, without prejudice to any rights he may have against the relevant trust creditors.

14. A certificate issued by a director of the Legal Practitioners' Fidelity Fund shall constitute prima facie proof of the curator's costs, and the Registrar is authorised to issue a writ of execution on the strength of such certificate to collect such costs.

[redacted]

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A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

I agree.

[redacted]

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A H PETERSEN

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Applicant: Ms Moolman

Instructed by: Damons Magardie Richardson Attorneys

c/o Maponya Attorneys

Mahikeng

For the Respondent: No appearance