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**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 090698/24**

1. REPORTABLE: NO

2. OF INTEREST TO OTHER JUDGES: NO

3. REVISED: NO

26 May 2026

In the matter between:

**LAHER CONSTRUCTION**

**APPLICANT**

and

**LEGAL PRACTITIONERS FIDELITY FUND**

**FIRST RESPONDENT**

**LEGAL PRACTITIONERS FIDELITY BOARD**

**SECOND RESPONDENT**

**VEJANDRAN SHUNMUGAM PILLAY**

**THIRD RESPONDENT**

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**JUDGMENT**

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**MOGALE, AJ**

*Introduction*

[1] This is an application to review and set aside the First and Second Respondents' decision to reject the Applicant's claim against the First Respondent.

*Parties*

[2] The applicant is Laher Construction (Pty) Ltd, a company with limited liability, duly registered in accordance with the Companies Act, 71 of 2008, under registration number 2014/164861/07, with its registered address at Cr Northern Parkway and Crown-Wood, Ormonde, Johannesburg.

[3] The respondent is the Legal Practitioners' Fidelity Fund, a juristic person established in terms of section 53 of the Legal Practitioners Act 28 of 2014 ("the LPA"), with its principal office situated at 1[...] H[...] Road, Centurion.

[4] The second respondent is the Legal Practitioners' Fidelity Fund Board, established in terms of section 61 of the LPA, being the board responsible for managing and administering the Fund, with its principal office situated at 1[...] H[...] Road, Centurion ("the Board").

[5] The third respondent is Vejandran Shunmugam Pillay, an adult male attorney, practicing under the name and style Vejan Pillay and Company Attorneys, situated at Suite S[...], Second Floor, The Square, 2[...] U[...] R[...] Drive, La Lucia Ridge, Umhlanga Rocks, KwaZulu-Natal, and residing at 2[...] L[...] Drive, Umhlanga, KwaZulu-Natal.

### *Background*

[6] On 30 August 2017, the applicant deposited R1.95 million into the third respondent's trust account, held by Vejan Pillay and Company Attorneys, in connection with a property sale transaction. The third respondent also represented the developer of the property's development, Misty Blue Investments (Pty) Ltd (Misty Blue). His firm, Vejan Pillay and Company Attorneys, was appointed as the conveyancer for the transaction (the conveyancers). The third respondent served as both a seller (through Misty Blue) and a conveyancer (through Vejan Pillay and Company Attorneys)

[7] According to the parties' sale agreement, the funds transferred to the conveyancers were to be held in trust by them and subsequently transferred to Misty Blue upon the transfer of the property to the applicant. During this period, the funds were to be invested by the conveyancers.

[8] When the property was not transferred to the applicant, the applicant entered into a settlement agreement with Misty Blue (the settlement agreement), under which Misty Blue agreed to pay the applicant R 2 150 000. Upon such payment, the sale agreement would be cancelled. It was also agreed that should the payment of R 2 150 000 not be made by 30 November 2018, the sale agreement would remain in full force and effect, and the property would then be transferred to the applicant.

[9] The settlement agreement explicitly states that the funds were deposited into the conveyancers' trust account. This confirms that the original provision within the sale agreement, which stipulated that funds be held in trust and subsequently transferred to Misty Blue upon the transfer of the property, was not amended.

[10] Misty Blue did not pay R 2 150 000 to the applicant, nor did the property transfer to the applicant. Although funds were deposited into the conveyancers' trust account, they were not retained in trust as required. Instead, they were transferred to Misty Blue without the applicant's authorisation and contrary to the sale agreement.

[11] On 26 July 2022, the third respondent notified the applicant that Misty Blue was under provisional liquidation. The third respondent contested the liability of Vejan Pillay and Company Attorneys, asserting that the funds were paid in advance and subsequently credited on the basis that the payment was made to Misty Blue, with the purchase and sale agreement to be finalized at a later date. He argued that the sale agreement was never executed and that its terms were therefore inapplicable.

[12] The applicant discovered the third respondent's misappropriation of funds and filed a claim with the Fund under section 55 of the LPA. The Fund rejected the claim on the ground that the claim did not fall within the ambit of section 55 of the LPA.

[13] The applicant contacted the Fund to seek guidance on the internal procedures available for reviewing or appealing the rejection. On 3 June 2024, the Fund

reaffirmed its stance and informed the applicant that if they are dissatisfied with the decision, they may seek redress through the courts.

*Oral evidence*

[14] The applicant contended that, pursuant to the Promotion of Administration of Justice Act (PAJA), the Fund did not furnish reasons for its rejection of the claim when such reasons were duly requested.

[15] The claim is encompassed by Section 55, given that the funds remitted to the conveyancers were entrusted to their custody pending the completion of the property transaction. These funds were deposited into the conveyancers' trust account as part of the standard practice conducted by conveyancing attorneys.

[16] The Fund asserts that the settlement agreement altered the instructions and reasoning for holding the Applicant's funds in trust, which is incorrect. The funds were to be disbursed exclusively upon the registration of the property in the Applicant's name, and this stipulation was not amended by the settlement agreement. The sale agreement did not specify an immediate payment to Misty Blue; rather, it stated that the funds would be held in trust and invested until the transfer was completed. When Laher entered into the settlement agreement, he did not assume the role of the applicant.

[17] On behalf of the first and second respondents, advocate Van Wyk raised an issue of excussion in his answering affidavit. There is a Notice of Set Down for a Default Judgment application against the third respondent in the KwaZulu-Natal Local Division of the High Court, where all the respondents in this matter were cited. The applicant failed to submit a supplementary affidavit regarding the outcome of the default Judgment application.

[18] With regard to Section 79(1), the Fund serves as a last resort for claimants to seek a remedy. Claimants are required to exhaust all available legal remedies against the attorney in question, his estate, and all other persons liable under the law prior to the Fund recognizing liability for the loss. The applicants have failed to

inform the Fund of the steps they have taken to recover their funds from Vejan Pillay & Company or any other liable parties.

[19] The Applicant failed to establish the element of theft as stipulated in Section 55(1) of the Legal Practice Act. The settlement agreement and its terms clearly indicated that the Seller accepted liability and initiated performance accordingly.

[20] The respondents further contend that if the purchaser consents to the agreement with the seller regarding the payment or retention of funds for the developer and subsequently enters into a repayment, settlement, or loan-type arrangement with the seller, as is the present case, the respondents cannot be held liable. This is because the loss results from the seller/developer's default, not from theft, which the attorney for the money entrusted to them has not demonstrated in accordance with the relevant provisions of the Legal Practice Act.

[21] The other issue argued was that the applicant claims R 1 950 000, but it is conceded that he had already received R 115 000 and R 16 500 in August 2018 as occupational rent. This concession confirms that the applicant's claims do not fall within the purview of Section 55 of the Act but rather under Section 79 of the Act.

[22] The respondent further argued that the prescription, which was also not pleaded, was that the applicant became aware of this issue on 17 December 2018, but did nothing until 22 July 2022, 3 years had lapsed before the Fund was made aware.

[23] In response, Advocate Naidoo articulated that, for the purpose of just and equitable relief, the court ought to diminish the debt amounting to R 115 000 in addition to R 16 000. It is pertinent for the court to note that Misty Blue is not subject to section 55 of the Act, and the matter pertains to funds deposited into the attorneys' practice.

#### *Legal principles*

[24] Section 55 of LPA provides, as follows:

*"The Fund is liable to reimburse persons who suffer pecuniary loss, not exceeding the amount determined by the Minister from time to time by notice in the Gazette, as a result of theft of any money or other property given in trust to a trust account practice in the course of the practice of the attorney, if the theft is committed by an attorney in that practice, or any person employed by that practice or supervised by that attorney."*

[25] The elements for a claim under section 55 of the Act are as follows:

- a. There must be a pecuniary loss
- b. The loss must result from theft.
- c. The theft must be of money or property given in trust to a trust account practice
- d. The theft must be committed by an attorney in that practice or an employee under their supervision.

[26] Section 79(1) of the LPA provides that the Fund's liability only arises after all other legal remedies against the attorney and other liable persons have been exhausted. This is the principle of *excussion*.

[27] It is evident that the Fund's decision to reject a claim constitutes an administrative action as delineated in section 1 of PAJA. Such a decision is subject to judicial review on numerous grounds, including, but not limited to, the assertion that the action lacked a rational connection to the purpose of the empowering provisions, that irrelevant considerations were taken into account, or that the action was otherwise unlawful or unreasonable.

#### *Issue for determination*

[28] The central issue for determination is whether the Fund's decision to reject the applicant's claim on the ground that it does not fall within the ambit of section 55 is lawful and reasonable.

[29] Whether the applicant's failure to provide sufficient reasons as mandated by PAJA constitutes a procedural irregularity and renders the decision subject to review.

## *Evaluation*

[30] The undisputed facts demonstrate that the applicant deposited R 1 950 000 into the third respondent's trust account. These funds were entrusted to the third respondent for a specific purpose, namely, to be held in trust and transferred to the seller exclusively upon the transfer of the property. Without the applicant's authorization and contrary to the explicit terms of the sale agreement (which remained in force), the third respondent transferred the funds to Misty Blue. The property was never transferred, and the applicant did not receive the funds.

[31] In *Attorneys Fidelity Fund v Injo Investments CC*,<sup>1</sup> the court states that the intention of the individual making the payment forms the basis on which the entrustment should be assessed. The Court further held that:<sup>2</sup>

*“'entrustment' comprises two elements: (a) to place in the possession of something, (b) subject to a trust. As to the latter element, this connotes that the person entrusted is bound to deal with the property or money concerned for the benefit of others” (Footnote omitted)*

[32] In *Law Society of Cape of Good Hope v Budricks*,<sup>3</sup> it was established that an attorney who dishonestly appropriates trust funds for purposes not authorized by the client commits theft. Similarly, in *Cape Law Society v Parker*,<sup>4</sup> the court held that;

*“What respondent did may not amount to theft stricto sensu; however, there is high authority for the proposition that utilisation of trust moneys without the authority of the person entitled I thereto constitutes misappropriation, which amounts to and is treated as theft.*

*The principle, as it emerges from the cases, is that utilisation of the funds in a trust account without the authority of the person on whose behalf the funds are held for purposes which do not benefit him and in circumstances where he has not authorised such use amounts to misappropriation of trust money, which in turn is a form of theft.”*

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<sup>1</sup> 2016 (3) SA 62 (WCC) at p69.

<sup>2</sup> As above.

<sup>3</sup> (141/2001) [2002] ZASCA 51; [2002] 4 All SA 441 (SCA); 2003 (2) SA 11 (SCA) (24 May 2002) at para 10.

<sup>4</sup> 2000 (1) SA 582 (C) at p587.

I find that the third respondent's conduct constitutes theft under the above legal definition.

[33] The third respondent's actions were not merely negligent or a breach of contract; he intentionally disbursed trust funds to his own client, Misty Blue, in direct contravention of the mandate provided by the applicant. The fact that the third respondent also represented Misty Blue does not absolve him of his fiduciary duty to the applicant as the depositor of the trust funds.

[34] The settlement agreement did not alter the fundamental nature of the third respondent's obligation.<sup>5</sup> The agreement acknowledged that the funds were in the trust account. It did not authorise their release to Misty Blue prior to the transfer of the property or the alternative payment made by Misty Blue. The third respondent's release of the funds was therefore a clear misappropriation.

[35] The respondents' argument that the loss resulted from Misty Blue's default rather than theft is rejected. Although Misty Blue might be held liable under contractual obligations, the *direct cause* of the applicant's loss was the third respondent's unlawful release of the trust funds. Absent this release, Misty Blue would not have dissipated the funds. The Fund does not serve as a guarantor against commercial risks; rather, it functions as a guarantor against the theft of trust funds by legal practitioners.

[36] Regarding the issue of *excussion* under section 79(1), the Court finds that the purpose of the Fund is to provide a safety net for victims of attorney theft, not to relieve them of the obligation to pursue the delinquent attorney. In *L B N v Legal Practitioners Fidelity Fund and Others*,<sup>6</sup> the Court asserts that —

*“Section 79(1) of the Legal Practice Act is not phrased in mandatory terms. It provides the fund with discretion in the case of non-compliance. It provides that the fund “is not obliged” to pay out a claim “which could reasonably be recovered from any other person*

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<sup>5</sup> Above n 1 at para 30.

<sup>6</sup> (2024/091303) [2025] ZAGPPHC 1066 (19 September 2025) at para 41.

*liable". Put otherwise, if the claim could not be reasonably recovered from any other person liable, the fund may, but is not obliged to, pay out the claim."*

The discretionary powers afforded to the Fund are limited to reasonable recoveries, and such cases have to be assessed on a case-by-case basis. *In casu*, the applicant has demonstrated that they have taken steps against the third respondent, which fulfils the reasonable recovery requirement set out.

[37] Nonetheless, the Fund is not permitted to reject a claim solely because the claimant has not yet obtained a default judgment against the attorney, particularly in situations where, as in this case, the attorney is impecunious, or his practice has collapsed, and the developer is in liquidation. To require the applicant to exhaust all remedies against a liquidated developer and an attorney who has clearly breached his trust would be to prioritise form over substance. The applicant has demonstrated that it has taken steps against the third respondent.

[38] The failure to submit a supplementary affidavit regarding the default judgment is not considered fatal, given that the Fund was cognizant of the ongoing proceedings. In the interest of justice, the court will refrain from allowing the *excussion* defense to serve as a mere technicality, particularly when the underlying theft is evident.

[39] On the issue of prescription, the respondents did not plead prescription and are therefore not entitled to rely on it. Even if they had, the applicant became aware of the theft only when the third respondent confirmed the liquidation and the dissipation of funds on 26 July 2022. The claim was thereafter lodged with the Fund, well within the three-year prescriptive period.

[40] The amounts of R 115 000 and R 16 500 received by the applicant as occupational rent are not a repayment of the capital amount of R 1 950 000. They are compensation for the use and occupation of the property. The applicant has correctly conceded that these amounts should be set off against the total loss for the purpose of calculating the quantum of the claim. This does not alter the nature of the claim as one pursuant to section 55. The loss remains a pecuniary loss resulting from the theft of the original trust deposit.

[41] The Fund's decision to reject the claim was based on an incorrect interpretation of section 55 and a failure to appreciate the facts. The Fund took into account irrelevant considerations, such as the settlement agreement and the alleged change in instructions, and failed to consider the relevant consideration that the third respondent dishonestly appropriated trust money. The decision was therefore unreasonable and is reviewable under PAJA.

[42] The Court finds that the first and second respondents' decision to reject the applicant's claim is unlawful, unreasonable and hereby set aside.

[43] The applicant's claim shall be remitted to the first and second respondents for the purpose of determining the overall quantum of the loss involved.

*Order*

[44] Accordingly, the following order is made:

[40.1] The decision of the first and second Respondents to reject the Applicant's claim under section 55 of the Legal Practitioners Act 28 of 2014 is hereby reviewed and set aside.

[40.2] The applicant's claim is referred back to the first and second respondents for consideration.

[40.3] The First and Second Respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, including the costs of counsel on scale C.

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**K MOGALE**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Date of hearing:

20 April 2026

Date of judgment:

26 May 2026

*Appearances*

Applicants' council:

Adv Naidoo

Instructed by:

Shaheed Dollie Inc

Respondents' council:

Mr Van Wyk

Instructed by:

Stegmanns Inc

Attorneys