



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO.:13310/24P

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

APPLICANT

and

**JEANNE VOGEL VAN DER SANDT
NEDBANK LIMITED**

**FIRST RESPONDENT
SECOND RESPONDENT**

ORDER

1. The applicant's application is dismissed.
 2. There is no order as to costs.
-

JUDGMENT

Chithi J (Mngadi J and Pillay AJ concurring)

Introduction

[1] This is an application to strike-off the first respondent as a legal practitioner. The applicant is the Legal Practice Council ('LPC') a body corporate established in terms of s 4 of the Legal Practice Act 28 of 2014 ('the LPA') and exercises regulatory jurisdiction over all legal practitioners and candidate legal practitioners in the Republic of South Africa as contemplated in terms of the LPA. The first respondent is a legal practitioner who was admitted and enrolled as such on 23 March 2000 in the North Gauteng Division of the High Court in terms of s 15 of the Attorneys Act 53 of 1979. The first respondent practises under the name and style Vogel Van der Sandt Attorneys in Durban and has been practising as a sole practitioner since 2004. The second respondent conducts business as a bank in terms of the Banks Act 94 of 1990 and the first respondent operates her business and trust bank accounts with the second respondent.

[2] What brought about this application is the sanction which was imposed by the disciplinary committee ('the DC') on the first respondent on 23 January 2024 pursuant to a disciplinary enquiry. The circumstances antecedent to the disciplinary enquiry will be dealt with later in this judgment. The DC held that:

- (a) The first respondent was required to pay R50 000 which was the suspended portion off the fine of R65,000 which was imposed on her in 2021 because she had been found guilty of a similar offence within three years after that sanction was imposed.
- (b) The first respondent was ordered to provide proof that she had paid the sum of R15 000, which was the unsuspended portion of the R65 000 fine imposed in 2021. In the event that the first respondent had not paid the R15 000, she was also ordered to pay that portion of the fine.
- (c) In respect of all payments that the first respondent was required to make, the first respondent was entitled to approach the LPC to make payment arrangements.
- (d) The first respondent was ordered to attend a practice management training course during 2024.
- (e) For a period of two years, the first respondent would be precluded from practising as a sole practitioner but would only be allowed to practise as a professional assistant with a firm of attorneys that was prepared to employ her under that arrangement.

- (f) After the conclusion of the two-year period the first respondent would be entitled to apply to the LPC to be permitted to practise on her own account.
- (g) The first respondent is ordered to pay the cost of the disciplinary inquiry.

[3] The decision of the DC comprising the sanctions, as set out above, was submitted to the LPC's disciplinary oversight committee ('the DOC') on 11 April 2024, for its consideration. The DOC did not approve the imposed sanctions, because of the first respondent's previous history of misconduct. On 6 July 2024, the LPC resolved that strike-off proceedings be instituted against the first respondent. This application was instituted before this court on 30 August 2024 on the strength of that resolution.

[4] The first respondent primarily opposes the application on the basis that the DOC overturned the decision of the DC without advancing any reasons for doing so and affording her any hearing. This was in breach of the rules of natural justice particularly the *audi alteram partem* rule. The first respondent otherwise contended for a sanction which fell short of a strike-off. A proper starting point is therefore the first respondent's previous misconduct which comprises incidents in 2019/2020 and 2022.

The incident in 2019/2020

[5] In November 2019, the first respondent submitted her accounting records to the LPC as required in terms of rule 54.20 of the South African Legal Practice Counsel Rules ('LPC rules'). However, the first respondent's bookkeeper contacted the LPC and advised that there was a shortfall in the trust account of the first respondent as required in terms of rule 54.24.2.1.

[6] A meeting was subsequently convened between the LPC, and the first respondent and the first respondent confirmed the disclosure which was made by her bookkeeper. On 8 November 2019, the LPC directed that an inspection be conducted on the first respondent's practice on an urgent basis. The inspection was conducted on 5 December 2019 by an inspection committee comprising two members and an internal auditor

appointed by the LPC. The inspection committee later prepared an inspection report dated 29 January 2020, which it submitted to the LPC.

[7] The LPC summarised the relevant findings which are made in the inspection report as follows:

- (a) The first respondent did not keep a proper fee book and simply estimated the fee transfer that took place from month to month. Concomitantly, there were no statements demonstrating that the first respondent was entitled to the fees that were transferred from the trust account to the business account.
- (b) The first respondent admitted that her books of account were not written up every month, as she was obliged to.
- (c) The first respondent detected a shortfall in her books of account at the end of August 2018.
- (d) The first respondent admitted that her books were not balanced every month or every second month.
- (e) The first respondent utilised trust funds for her own personal use.
- (f) As of 5 December 2019, there was a shortfall of R365 158.58 in the trust account.
- (g) The first respondent recorded that the trust shortfall could be attributed to the fact that she paid her personal rental and staff salaries from her trust account and that she did not have the cash to immediately replace the shortfall.
- (h) An analysis of the trust account from 31 March 2018 until 29 November 2019 showed disturbing amounts of shortfalls each month.
- (i) The manner in which the first respondent dealt with her trust account was unacceptable. Whilst the first respondent created the impression that the shortfalls were dealt with on a monthly basis, and there were no apparent shortfalls, on a factual analysis, this was not the position.
- (j) An inspection of one client's trust account (the Saxjet Trust) showed that whilst the ledger code JS0346 demonstrated that an amount of R152 174.26 was in trust, this amount was not reflected in the trust account.
- (k) The first respondent did not issue trust receipts.

[8] The LPC further contended that the first respondent acknowledged her wrongdoing in transferring lump sum amounts from the trust account to the business account and estimating what her fees would be, without there being client statements and without the work being completed. The LPC pointed out that the first respondent made a disturbing concession that whilst she detected that there was a shortfall in August 2018, she still continued transferring lump sums of money as fees from her trust account to her business account until an astronomical shortfall of R365 158.58 showed as at 29 November 2019.

[9] As part of the remedial action in its report the inspection committee recommended that:

- (a) The first respondent be suspended from practice.
- (b) The first respondent re-imburses the trust funds to the trust account.
- (c) The first respondent be directed to undergo training in practice management.

[10] Notwithstanding these recommendations the LPC declined to accept them and instead convened a disciplinary enquiry against the first respondent. The disciplinary hearing was held on 25 March 2021. The DC comprised three members, namely Mr Ian Lax, Ms Josette Manual and Mr Trishal Sharma with the pro forma prosecutor being Mr Chris James. The first respondent did not personally attend the hearing but was represented by counsel, namely Ms C Smart and Mr M Tucker. The first respondent was charged with four counts of misconduct. It was alleged that:

- (a) She was guilty of misappropriating the funds entrusted to her without intent and through mismanagement.
- (b) She allowed her trust account to be in deficit in contravention of rule 54.14.8.
- (c) She failed to maintain her books of account in accordance with the prescripts of rule 54.10 of the LPC rules.
- (d) She transferred fees from her trust account to her business account without a statement allocated to any particular file or defining the fees earned thereby contravening rule 54.11.2.

[11] The first respondent pleaded guilty to the charges and was consequently found guilty as charged. Subsequently, the DC imposed the following sanction upon her:

- (a) She was ordered to pay a fine of R65 000.
- (b) R50 000 of the fine was suspended for a period of 3 years on condition that:
 - (i) The first respondent was not convicted of a similar misconduct during the period of suspension; and
 - (ii) The first respondent completed training in practice management before the end of 2021 offered through the Law Society of South Africa's Legal Education and Development.
- (c) She was ordered to pay for the costs of the inspection and the hearing to the LPC.

The incident in 2022

[12] The LPC contended that for the year ending December 2022, the first respondent did not apply for, nor was she issued with a Fidelity Fund Certificate ('FFC'). The LPC submitted that what this meant was that without an FFC, the first respondent was not able to practice for the year 2023.

[13] The LPC then convened a disciplinary hearing against the first respondent. The hearing was held on 6 July 2023. The DC comprised three members, namely Mr I H Patterson-Roberts, Mr Mahendra Ori, and Mr E T Mhlongo. The first respondent represented herself at the hearing. The first respondent was charged with three counts of misconduct. It was alleged that:

- (a) She was guilty of misconduct in terms of clause 21.1 and 21.2 of the Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities ('LPC Code of Conduct') in that she breached and/or contravened and/or failed to comply with s 84 (1) of the LPA in that she failed to apply prior to 1 December 2022 for an FFC and be in possession of a valid FFC for the year 2023.
- (b) She is guilty of misconduct in terms of clause 21.1 and 21.2 of the LPC Code of Conduct in that she breached and/or contravened and/or failed to comply with rule 57.1 of the LPC rules in that she failed and/or neglected and/or refused to comply with rule

47.7.2 in that she failed to submit her certificate from the auditor timeously or at all for the year 2022.

(c) She was guilty of misconduct in terms of clause 21.1 and 21.2 of the LPC Code of Conduct in that she breached and/or contravened and/or failed to comply with s 85(2) of the LPA read with rule 4 of the LPC rules in that she failed and/or refused and/or neglected to make payment of her annual subscriptions with the arrear balance of R27 629.20.

[14] The first respondent pleaded guilty to the charges and was consequently found guilty as charged. Subsequently, on 4 August 2023, the DC imposed the following sanction upon her:

(a) The first respondent was ordered to pay a fine of R1 000 in respect of each count by no later than 31 December 2023.

(b) Further, the first respondent was ordered to pay all her arrear subscriptions to the LPC by no later than 31 December 2023.

(c) Additionally, the first respondent was ordered to submit her 2022 auditor's certificate by no later than 31 August 2023.

(d) The first respondent was suspended forthwith from practising as a legal practitioner until she complied with all requirements to obtain a valid FFC to the satisfaction of the LPC. In the event that the first respondent failed to obtain a valid FFC by 31 December 2023, the DC recommended to the LPC to institute strike-off proceedings against the first respondent.

(e) Lastly, the first respondent was ordered to re-imburse all clients for whom she, at that stage, held trust monies in her account, by no later than 31 December 2023.

[15] Despite being ordered by the DC to obtain a valid FFC by no later than 31 December 2023, the first respondent did not obtain her FFC.

The incident which triggered this application

[16] In July and August 2023, the first respondent submitted her audit reports for the year ending February 2022 and February 2023, respectively. There were qualifications which were raised in the report for both years by the first respondent's auditors Messrs N

V Kandal and Company. As a result of these qualifications the LPC appointed an investigation committee comprising Mr T Sharma and Mr D J Nzimande to conduct an inspection of the first respondent's books, documents and accounting records. An inspection was conducted at the first respondent's offices on 25 October 2023.

[17] During the inspection the first respondent was reportedly upfront and confirmed that there was a shortfall in her trust account in the sum of R101 711.69 for the period February 2022/2023. This shortfall arose because of transfers she made from her trust account to her business account. In addition, the first respondent confirmed attempting to rectify the shortfall and that as of 25 October 2023, the shortfall only amounted to R16 946.74. Pursuant to the investigation, the investigation committee recommended to the LPC that the matter be referred to the DC. These are the circumstances which were a precursor to the disciplinary enquiry that has led to the matter before this court.

[18] A disciplinary enquiry was convened on 23 January 2024. The DC comprised three members, namely Mr G Pentecost, Mrs R Pillay and Mr M Nxumalo. The charges in an abbreviated form were that the first respondent: failed to refrain from doing anything which could bring the attorneys' profession into disrepute; failed to ensure that trust creditors' funds were safe guarded; failed to ensure that trust creditors were not in debit; made unlawful/unauthorised transfers from trust account of approximately R101 711-69; failed to ensure that the firm was fully compliant with LPC rules; failed to ensure safety of trust interest by failing to safeguard trust funds; failed to maintain a high standard of integrity thus a trust creditors shortfall of R101 711-69. In a nutshell the charges arose due to a trust account shortfall of R101 711-69. The first respondent pleaded guilty to all the charges against her.

[19] The DC did not specifically record in its decision, i.e. the guilty finding against the first respondent. It just proceeded to impose the sanction as set out in paragraph 2 above. This court does not consider this omission to be fatal for two reasons. First, because the first respondent had pleaded guilty to the charges and did not at any stage put that into question. Second, for the DC to have proceeded to sanction the first respondent it would

not ordinarily have done so without having convicted the first respondent first. It is the sanction which was imposed by the DC on the first respondent as set out in paragraph 2 above which triggered this application. When the decision of the DC was placed before the DOC on 11 April 2024 for consideration it disagreed with it. It considered the sanction lenient for the serious misconduct for which the first respondent was convicted and in respect of which she was a repeat offender. It was on the basis of the sentiments as expressed by the DOC that on 6 July 2024, the LPC resolved that strike-off proceedings be instituted against the first respondent.

The basis upon which the LPC seeks to strike the first respondent off the roll

[20] In its affidavit the LPC enumerated the following facts as the basis upon which it contended that it was appropriate for the first respondent to be struck-off the roll of legal practitioners:

- (a) Paraphrasing from the representations the first respondent made in mitigation of her sanction in respect of the 2022 incident, the LPC submitted that 'as is evident from the first respondent's own submissions, the practice of law has become extremely stressful for the first respondent.' Obviously, the first respondent's clients and trust creditors were potential victims in such circumstances.
- (b) In order to maintain the integrity of the profession, the LPC was duty bound to ensure strict compliance with the provisions of the LPA, the LPC rules and the LPC Code of Conduct.
- (c) Despite the first respondent making promises that her firm's accounting records would be dealt with appropriately, when she was initially charged for misconduct, evidently the first respondent had not done so.
- (d) The issuing of an FFC was of seminal importance to legal practice as it not only signifies that the books of record of a legal practitioner are in order but also as determined by the LPC, a legal practitioner was required to complete a Practice Management Course. Despite the first respondent having previously been ordered to undergo training in practice management, she failed to do so as a result of which there were perpetual breaches of the LPA, LPC rules and the LPC Code of Conduct insofar as the management of trust monies was concerned. Whilst the LPC was sympathetic to the first respondent

in relation to the misfortunes which she personally suffered, such considerations could not outweigh the general interest of trust creditors, and the integrity of the legal practice let alone the integrity of trust money.

(e) While the LPC was aware that the first respondent was in the process of completing the Practice Management Course, as ordered by the DC in respect of the second incident in 2022, but given the findings of the DC dated 23 January 2024, the LPC was duty bound to place all the relevant facts before this court to enable it to exercise its discretion in respect of the first respondent, as it was the one which admitted legal practitioners after all.

(f) It was extremely disturbing to say the least that the first respondent did not issue trust receipts to her clients and simply transferred monies as and when she chose without proper fee books. All the first respondent's breaches viewed holistically could not be regarded as acceptable. The first respondent being the one who chose to enter the legal profession of her own accord failed to adhere to the very strictures that are applicable to all legal practitioners nationwide.

[21] The LPC contended that according to its records the first respondent operated her trust account with the second respondent. Although the LPC did not have information with regard to whether the first respondent also operated accounts in respect of deceased estates, bank accounts in respect of which the first respondent may have been appointed as curator, accounts in respect of insolvent estates in which the first respondent may have been appointed as a trustee, accounts in respect of which the first respondent may have been appointed as a trustee as in terms of the Trust Property Control Act 57 of 1988, accounts in which the first respondent may have been appointed as a liquidator in terms of the Companies Act 61 of 1973, accounts in which the first respondent may have been appointed as a liquidator in terms of the Close Corporations Act 69 of 1984, it was possible that it may have had those accounts held with the second respondent. For those reasons the LPC submitted that it was necessary and crucially important for this court to issue an order directing the second respondent to suspend the operation of the first respondent's trust and other related accounts to enable the LPC to properly protect the interests of other trust creditors and beneficiaries of the monies in those accounts.

[22] In the circumstances, the LPC submitted that the first respondent was not a fit and proper person to continue practising as a legal practitioner and, in accordance with the provisions of the LPA the first respondent should be removed from the roll of legal practitioners.

The first respondent's case against her strike-off

[23] The first respondent contended that:

- (a) She never knowingly or wilfully misappropriated any funds from her clients during the course of her 24 years of practise.
- (b) The irregularities in her trust account which the LPC attributed to her own inadequacies in her knowledge of bookkeeping practice were brought about by the changes in the legislative framework which affected the entire legal profession which changes the LPC had pertinently referred in paragraph 5 of its founding affidavit.
- (c) She ran a small practice dealing mainly with family law and mediation.
- (d) The gross fee turnover of her practice had never exceeded R800 000.00 per annum.
- (e) For these reasons she had never employed a full-time bookkeeper and had endeavoured to keep her practice books by herself. However, with the benefit of hindsight this was a mistake for which she apologises.
- (f) As directed by the DC she successfully attended training in practice management and attained an aggregate mark of 81% for the course.
- (g) In addition, she has since retained the services of a legal bookkeeper from the firm Lexpro, and this bookkeeper filed a confirmatory affidavit which confirmed her appointment and the services she would be rendering. The services Lexpro would be rendering would be the reconciliation of her financial accounts on a weekly basis and had been rendering those services at least since 24 May 2024. The financial accounts would then be forwarded to her auditors Messrs V N Kandailal and Company and if necessary to the LPC as often as the LPC required.

[24] The first respondent further pointed out that all of the accounting shortfalls had been rectified by her in full. This is reflected in the 2024 audit report attached as an annexure to her affidavit and was submitted to the LPC by her auditors who confirmed that all shortfalls had been settled.

[25] Regarding her failure to apply for an FFC, the first respondent stated that she applied for her 2024 FFC using the LPC's online portal and had made the necessary payment on 15 September 2023. However, the portal did not allow her to apply for an FFC. Upon enquiring from the LPC's legal officer, Ms A Willoughby, she had advised her by way of an email that the portal should not restrict her from applying for her FFC but would merely hold back the issuing of the FFC if her audit report was outstanding.

[26] In respect of her 2023 FFC the first respondent stated that the response to her application from the LPC's portal recorded 'Certificate Pending – Awaiting updates....' When she enquired from Ms Willoughby about her predicament, Ms Willoughby advised her by way of an e-mail that although she had submitted her audit reports for 2022 and 2023 it appeared that those reports were not yet approved because of the inspection which had been conducted at her offices. Ms Willoughby advised further that as her audit reports remained unapproved, she would not be able to obtain the FFC. She would only be able to apply for her 2024 FFC once her 2023 FFC had been issued.

[27] The first respondent further stated that she assumed that her FFC was not issued because of the disciplinary enquiry which was contemplated against her as per the LPC's notification dated 17 November 2023. However, the LPC had never indicated to her as to why it had not issued her with an FFC. This was despite the LPC being in possession of her audit reports not only for 2024 but also for 2022 and 2023, which reports the LPC had for over a year. The first respondent furthermore stated that one other attempt she made to apply for her 2023/2024 FFC using the LPC's online portal was on 6 March 2024. While she had paid the prescribed online fee the portal declined to issue her with her FFC because her audit report had not yet been approved by the LPC.

[28] The first respondent urged this court to be lenient in adjudicating this case and to consider imposing on her a sanction which fell short of a strike-off. The first respondent further implored this court to consider the following facts as mitigating circumstances militating against her strike-off as a legal practitioner:

- (a) She has had a clean disciplinary record for the past 24 years of practise except for her latter disciplinary record relating to her trust account shortfall, her failure to, have an FFC, submit an audit report timeously and pay her subscriptions.
- (b) In respect of the first shortfall, she, herself, had immediately notified the LPC of the problem and arranged to have the shortfall repaid.
- (c) In respect of the shortfall which triggered these proceedings, the first respondent stated that as soon as she became aware of it, she immediately took the necessary steps to repay it in full.
- (d) None of her clients had requested payment of their funds.
- (e) As she practised in a specialist area of family law, she provided an extremely valuable service in a field of law in which people encountered problems almost on an everyday basis.
- (f) If she was struck off her employees would be rendered unemployed thereby destitute.
- (g) The accounting programme which she was using allowed her to determine if there was a shortfall.
- (h) She consistently submitted her monthly accounts to her auditors.

[29] The first respondent stated that the facts as set out above are the same as those which she placed before the DC. The DC concluded that she was genuinely remorseful of what she had done and that she had not done it with a deliberate intention of misappropriating funds. Importantly, she had repaid the shortfall in respect of her trust account.

[30] The first respondent contended that the DC was constituted by three senior attorneys. When she appeared before the DC, she made an honest and complete disclosure of all the facts. The DC was therefore steeped into the atmosphere of the matter and in adjudicating the matter the DC was best placed to make the decision which it came to.

The events after the DC's decision

[31] In respect of the timeline after the decision the first respondent stated that she received the decision of the DC on 26 February 2024. She gave effect to one of the recommendations relating to her attendance at a training course in practice management by enrolling and attending that course for the period between 4 May to 1 July 2024. Regarding the DC's directive which precluded her from practising as a sole practitioner for two years, unless she practised as a professional assistant with a firm of attorneys that was prepared to employ her in that capacity, the first respondent stated that her attorneys directed three letters to the LPC. However, they did not immediately get a response from the LPC. In the first letter they were seeking clarity as to how the first respondent would go about giving effect to that directive. While in the second letter her attorneys proposed among others an amendment to the DC's directive and in addition suggested the way the first respondent proposed to pay the fine, which was imposed by the DC. The third letter was just a reminder relating to the second letter.

[32] On 8 July 2024, her attorneys received an email reply to their letter from the LPC's Ms C Green which was copied to several other stakeholders of the LPC in which reference was made to an attachment. Pursuant thereto on 15 July 2024, her attorney received a further e-mail reply from Ms T Dlamini of the LPC's disciplinary department. In this e-mail Ms Dlamini stated that if the first respondent was not satisfied with the decision of the DC, she was entitled to lodge an appeal. In addition, she stated that the LPC's appeals tribunal had been constituted and provided the first respondent with the relevant e-mail addresses of the LPC's appeal section which she could contact.

[33] On 16 July 2024, she received a letter directly from the LPC's offices in which she was advised that the LPC at its meeting on 4 July 2024 resolved not to accept the DC's ruling on the sanction and further resolved that strike-off proceedings be instituted against her.

[34] By way of a letter dated 30 July 2024, the first respondent, through her attorneys, challenged the way in which the LPC sought to overturn the decision of the DC. She challenged the decision because she was not furnished with reasons as to why the LPC decided to simply overturn and disregard the findings and sanction of the DC without offering her or her legal representatives any opportunity of making representations as to why they should not overturn those findings, but the LPC simply unilaterally took a drastic decision against her. Apart from challenging the decision she also requested copies of the minutes of the meeting of the LPC which was held on 4 July 2024.

[35] In its preliminary response to the letter from the first respondent's attorneys the LPC's attorneys advised that 'the issue concerning the disciplinary hearing and the appeal were considered by the Disciplinary Oversight Committee and a recommendation was made to the National Council, hence the Resolution to proceed with the strike off application.' The first respondent contended that this was gravely concerning to her because she was not even given the opportunity to lodge an appeal against the decision made by the DC on 25 January 2024 as the LPC had suggested that it was an option which was available to her if she was dissatisfied with the decision.

[36] Apprehensive to know the reasons why the DOC took the drastic decision to have her struck off the roll, on 12 August 2024, the first respondent requested a copy of the resolution, all the documentation which the DOC considered in making its decision, the minutes of the DOC and the recommendation of the DOC to the LPC. On 14 August 2024, in a preliminary reply, the LPC's attorneys assured the first respondent that DOC I; in keeping with their conduct, they were not obliged to follow any recommendation made by a DC. They act in the best interest of the profession in their role as *custos morum* of the legal profession. On 19 August 2024, the LPC's attorneys ultimately furnished the first

respondent with a certified extract of the minutes of the meeting which was held by the LPC on 6 July 2024.

[37] The first respondent making specific reference to the finding of the DC contended that after hearing all the evidence and considering all the documentation the DC concluded that the transgressions in respect of which she had been found guilty did not merit a striking off. In contradistinction the LPC, without the benefit of hearing any evidence, overruled the DC's findings and applied to strike her off without affording her a hearing. The first respondent submitted that the LPC's conduct was tantamount to a denial of her basic right of *audi alteram partem*.

[38] The first respondent submitted that the DC after it had afforded her a hearing it did not recommend that she be struck off, and yet the LPC without affording her a hearing, decided to resolve that she be struck off, hence it brought the application. The first respondent contended that the purpose behind appointing disciplinary committees is to hear evidence, study documentation, hear argument and then make a recommendation. The LPC abrogated to itself the right to apply to strike her off, contrary to the advice of its own disciplinary committees. The first respondent contended that it appeared that the LPC in overturning the decision of the DC because she was a repeat offender, it sought to punish her for the past transgressions.

[39] The first respondent proposed that the following order would be fair, just and proper, that:

- (a) The matter be adjourned *sine die*.
- (b) The LPC be directed to issue her with the Fidelity Fund Certificate for the current year.
- (c) The first respondent be directed to submit a trust audit report to the LPC prior to the 31 August 2025 and on the same day of each and every year thereafter.
- (d) The LPC be granted leave, if it so desires, to file further papers if, in its opinion, it believes that the audit report does not in any way comply with the LPC's rules and regulations.

(e) The first respondent be ordered to pay the costs of this application.

[40] The first respondent stated that the LPC in its founding affidavit made reference to several of its rules and to s 40(3)(iv) of the LPA. The first respondent submitted that it was not clear to her exactly as to what the functions and powers of the DOC were. Section 40(3)(iv) of the LPA only afforded a DC the right to advise the LPC to apply for an order striking the practitioner's name from the roll. There was nothing in the LPC's rules which provides for an extraordinary situation where the LPC would overturn the decision of a duly appointed DC. The first respondent contended that unless the DC advised the LPC to apply for the practitioner to be struck off it was not open to the LPC *mero moto* simply to make that application.

[41] The first respondent further contended that the LPC's resolution which overturned the decision of its own DC was wrong in law, particularly when it was taken without affording her or her legal representatives an opportunity of making representations as to why an application to strike her off the roll should not have been brought. In proceeding with an application to strike her off, she had been deprived of her right to be heard. Regarding the timeline, the first respondent pointed out that the decision of the DC was made on 23 January 2024. She received the decision on 26 February 2024. The LPC resolved not to accept the decision on 4 July 2024 and only advised her of that decision on 16 July 2024.

The LPC's case in reply

[42] In reply the LPC maintained its stance as set out in its founding affidavit. It emphasised that even under the Attorneys Act, bookkeeping requirements had to be rigidly adhered to, and those objectives have not changed, even under the LPA. The LPC pointed out that it was always incumbent upon the first respondent to maintain proper books of account whether with, or without the assistance of a bookkeeper. This size of the practice or the nature of work which was done by the legal practitioner was irrelevant. It maintained that this court was also an appropriate forum to exercise its discretion regarding this application. It further pointed out that once the DC had made its decision it

was *functus officio* and could not revisit its own decision. The LPC maintained that the DOC was entitled to act as it did. It is a committee which was established in 2019 in terms of s 18 of the LPA whose function is to exercise oversight authority in respect of sanctions imposed by the DCs and has been established in all nine provincial councils.

The issues

[43] The following are the issues which this court must determine:

- (a) Whether the decision of the DC was binding on the LPC; and
- (b) Whether the first respondent should be struck off the roll of legal practitioners.

The parties' submissions

[44] Mr *Chetty*, on behalf of the LPC, relying upon the case of *De Villiers and Another v McIntyre NO*¹ and other legal authorities post *De Villiers* argued that the LPC as the custodian of the prestige, status and dignity of the legal profession with the object of protecting public interest was entitled to institute strike off proceedings against the first respondent. In doing so the LPC claimed nothing for itself but was merely placing the relevant information concerning the conduct of the first respondent before this court to enable it to decide whether it should exercise its inherent disciplinary powers over him. During his argument Mr *Chetty* conceded that this matter might not warrant a strike off. Concerning the issue of whether the decision of the DC was binding on the LPC Mr *Chetty* relying on the case *South African Legal Practice Council v Swart*,² he submitted that it was not.

[45] Conversely, Mr *Harpur SC* for the first respondent argued that once the DC imposed sanctions and no appeal was lodged to the appeal tribunal its decision was binding. The LPC had no statutory power to override or reject the DC's findings via an internal committee such as its DOC. Mr *Harpur* went on to argue that the DC had imposed a sanction upon the first respondent, which the first respondent accepted and to which no appeal was lodged by any party. Notwithstanding that, the LPC repudiated the outcome

¹ *De Villiers and Another v McIntyre NO* 1921 AD 425 (*De Villiers*).

² *South African Legal Practice Council v Swartz* 2025 (6) SA 604 (WCC) ('*Swartz*').

of the DC and instituted this application. Mr *Harpur* contended that the LPC's conduct was *ultra vires*, as the LPC could not appeal to itself. In support of this contention Mr *Harpur* relied on the case of *Minister of Public Works v Haffejee NO*.³ Mr *Harper* further argued that even if this court exercised its discretionary powers in terms of s 44(1) of the LPA a striking off would be disproportionate and inconsistent with progressive discipline which a suspension entails which by its very nature has corrective and rehabilitative benefits effect. In any event he emphasized that a strike off should be considered as a matter of last resort. Mr *Harpur* pointed out that on the holistic consideration of the peculiar circumstances of this case a striking off would be inappropriate.

[46] Concerning the question whether the decision of the DC was binding on the LPC, Mr *Harpur* argued that *Swartz* was not binding to this court and this court should not follow it. He submitted that *Swartz* was both factually distinguishable to this case and was legally unsound. He pointed out that the DC in *Swartz* issued a non-binding recommendation for the suspension of a legal practitioner which it sent to the DOC for finalization and approval. Mr *Harpur* contended that s 40(8) of the LPA requires the LPC in peremptory terms to give effect to the advice and decision of the DC.

[47] Moreover, he argued that the DC derived its powers directly from the LPA. It therefore exercised the original powers and was not exercising delegated powers from the LPC in terms of s 6(1)(a)(x)(bb) of the LPA. Mr *Harpur* suggested that the appeal structure, which s 41 of the LPA contemplates recognises the appeal tribunal as the only forum through which the decisions of the DC may be appealed. Mr *Harpur* argued that DC's decision is intended to be final and binding unless reversed on appeal and cannot be ignored or overridden by the LPC, which is not vested with the appellate jurisdiction. He therefore suggested that the LPC's attempt to bypass the framework provided by the LPA and substitute its own contrary outcome, without appeal, undermines the finality of the DC's decisions and violates the rule of law. In arguing that the DC's decision was final

³ *Minister of Public Works v Haffejee NO* 1996 (3) SA 745 (A) at 751E - I.

Mr *Harpur* anchored his argument on *Zweni v Minister of Law and Order*⁴ as reaffirmed by the Supreme Court of Appeal in *MV Smart: Minmetal Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart*⁵ augmenting the three attributes by an additional factor of the interests of justice. He contended that the DC's decision had all these attributes.

[48] Mr *Harpur* went on to argue that what *Swartz* populates is that the LPC may disregard the decision of its own DC and substitute it with contrary outcome, absent any statutory appeal. Mr *Harpur* pointed out that on the same logic, what this meant is that the LPC could also override the outcome of Appeal Tribunal. He emphasised that this would be untenable and completely inconsistent with the structure of LPA, the principles of natural justice, the requirement of finality in quasi-judicial proceedings and the rule of law. Additionally, Mr *Harpur* argued that the position postulated in *Swartz*:

- (a) creates a lacuna in which a legal practitioner has no hearing at all before the LPC itself when it overturns the decision of the DC nor right of recourse against the LPC's substituted decision since no statutory appeal exists from the LPC's override.;
- (b) violates the practitioner's rights under s 34 of the Constitution.
- (c) eviscerates the plain meaning of s 40(8) of the LPA.
- (d) offends the *generalia specialibus non derogant* principle.
- (e) undermines the principle of legality.

[49] Mr *Harpur* suggested that the correct interpretation is that once the DC has made a finding and imposed a sanction, and where no appeal has been lodged in terms of s 41 of the LPA, the LPC was bound to implement the outcome and had no right to reopen and relitigate it. He urged this court to prefer this interpretation as one which is constitutionally compliant with the LPA. This notwithstanding, this court exercising its discretionary powers in terms of s 40 of the LPA is still entitled to consider the appropriateness of the

⁴ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) which held that a judgment or order of court is appealable if it has three attributes, namely (a) It must be final in effect and not susceptible to alteration by the court of first instance, (b) it must be definitive of the rights of the parties, and (c) it must have the effect of disposing of at least a substantial portion of the relief claimed.

⁵ *MV Smart: Minmetal Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* [2024] ZASCA 129; 2025 (1) SA 392 (SCA) para 32.

sanction which was imposed on the first respondent by the DC. The only issue therefore which must be determined by this court is whether the DOC can legitimately overturn the decision of the DC.

Whether the decision of the DC was binding on the LPC

[50] Apart from the paucity of authorities, the interpretation of, and the interplay between ss 6, 40(8), 41(1) and 44(1) is not really a novel issue. *Swartz* is not the only authority on the subject. More than two years before *Swartz* the Eastern Cape Division of the High Court of South Africa, Makhanda grappled with the very subject matter. After considering the implicated provisions by employing interpretative techniques as espoused by our courts and the jurisprudence which prevailed before the enactment of the LPA, like in *Swartz*, it found that the decision of the DC was not binding on the LPC.⁶ Both *Swartz* and *Mfundisi* have since been confirmed by the Supreme Court of Appeal in *South African Legal Practice Council v Oosthuizen*⁷ a judgment which was delivered on 7 November 2025, after the hearing of this matter. This question is now settled.

[51] Be that as it may and given the comprehensive submissions which were advanced by the parties in this matter it is still necessary to answer this question within the context of this case. In determining this question, the proper starting point is to consider the relevant provisions of the LPA which are implicated, namely ss 5, 6, 40(8), 41 and 44(1) of the LPA. For completeness, I will reproduce verbatim the relevant excerpts of the provisions of the LPA save that I will not repeat those that I have traversed above. The following provisions are relevant to the matter before this court:

'5 Objects of Council

The objects of the Council are to-

- (a) facilitate the realisation of the goal of a transformed and restructured legal profession that is accountable, efficient and independent;
- (b) ensure that fees charged by legal practitioners for legal services rendered are reasonable and promote access to legal services, thereby enhancing access to justice;

⁶ *Eastern Cape Provincial Council of the South African Legal Practice Council v Mfundisi* 2023] 1 All SA 90 (ECG) ('*Mfundisi*').

⁷ *South African Legal Practice Council v Oosthuizen* [2025] ZASCA 168 ('*Oosthuizen*').

- (c) promote and protect the public interest;
- (d) regulate all legal practitioners and all candidate legal practitioners;
- (e) preserve and uphold the independence of the legal profession;
- (f) enhance and maintain the integrity and status of the legal profession;
- (g) determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners;
- (h) promote high standards of legal education and training, and compulsory post-qualification professional development;
- (i) promote access to the legal profession, in pursuit of a legal profession that broadly reflects the demographics of the Republic;
- (j) ensure accessible and sustainable training of law graduates aspiring to be admitted and enrolled as legal practitioners;
- (k) uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic; and
- (l) give effect to the provisions of this Act in order to achieve the purpose of this Act, as set out in section 3.

6 Powers and functions of Council

(1)(a) In order to achieve its objects referred to in section 5, and, having due regard to the Constitution, applicable legislation and the inputs of the Ombud and Parliament, the Council may-

...

- (x) delegate any of its powers and functions to its committees or Provincial Councils, subject to any conditions it may impose, which delegation does not-
 - (aa) divest the Council of the power or function so delegated; and
 - (bb) preclude the Council from varying or setting aside any decision made under a delegation

...

41 Appeal against conduct or finding of disciplinary committee

(1)(a) Subject to section 44, a legal practitioner, candidate legal practitioner or juristic entity may, as determined in the rules and within 30 days of being informed of the decision by a disciplinary committee, lodge an appeal with an appeal tribunal established in terms of subsection (2) against a finding of misconduct by the disciplinary committee or against the sanction imposed, or both.

- (b) A complainant who is aggrieved by-
 - (i) the manner in which an investigating committee conducted its investigation or the outcome of the investigating committee as referred to in section 37 (3) (b); or

- (ii) the outcome of a disciplinary hearing referred to in section 40, may, as determined in the rules and within 30 days of being informed of the decision by the investigating committee or the disciplinary committee, as the case may be, lodge an appeal with an appeal tribunal established in terms of subsection (2) against any conduct or finding of the investigating committee or disciplinary committee, as the case may be.

...

44 Powers of High Court

(1) The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.

(2) Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate legal practitioner or juristic entity or in connection with any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.'

[52] A proper reading of provisions of the LPA set out above reveals that the LPA did not jettison the jurisprudence which always formed part of our law for many decades regarding strike off proceedings. The nature of these proceedings has always been classified as *sui generis* and not as ordinary civil proceedings wherein the applicant claims nothing for itself but merely brings the attorney before court by virtue of its statutory powers and asks the court to exercise its disciplinary powers over him.⁸

[53] Before the advent of the LPA the respective provincial law societies used to exercise this power in terms of s 22(1) of the now repealed Attorneys Act. It is against this jurisprudential background that the provisions of s 40(8) of the LPA must be interpreted and were interpreted in *Mfundisi, Swartz and Oosthuizen*.

⁸ *De Villiers and Another v McIntyre* NO 1921 AD 425; *Cirota and Another v Law Society, Transvaal* 1979 (1) SA 172 (A) 187G - H; *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A) at 640C - D; *Law Society, Transvaal v Mathews* 1989 (4) SA 389 (T) at 390 E-F; *General Council of the Bar of South Africa v Matthys* 2002 (5) SA 1 (E) para 4.1; *Van der Berg v General Council of the Bar of South Africa* [2007] ZASCA 16; [2007] 2 All SA 499 (SCA) para 2.

[54] Indeed, the provisions of s 40(8) require the LPC in peremptory terms that it must give effect to the advice and the decision of the DC. When the Legislature enacted the LPA and included s 40(8) as part of the LPA it was alive to the functions which the LPC has to perform as a *custos morum* of the profession and that the court would not be able to exercise its inherent disciplinary powers over legal practitioners in cases of misconduct and unprofessional conduct on its own, if it deprived the LPC of its historical duty.

[55] The Supreme Court of Appeal in *Thoroughbred Breeders' Association v Price Waterhouse*⁹ approving its earlier judgment in *University of Cape Town v Cape Bar Council and Another*,¹⁰ underscoring the significance of considering the context in which words are used, stressed that:

'The days are long past when blinkered peering at an isolated provision in a statute was thought to be the only legitimate technique in interpreting it if it seemed on the face of it to have a readily discernible meaning.'

[56] In the interpretation of a statute, the primary rule and a convenient starting point is that the words used should be accorded their ordinary grammatical meaning, which is the expression of the well-known technique in the interpretation of statutes. However, equally significant are three other interrelated riders to this primary rule,¹¹ namely: (a) that statutory provisions should always be interpreted purposively;¹² (b) that the relevant statutory provision must be properly contextualised;¹³ (c) that all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in

⁹ *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA) para 12.

¹⁰ *University of Cape Town v Cape Bar Council and Another* 1986 (4) SA 903 (A) at 914D-E.

¹¹ *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC) para 28.

¹² *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Co. Ltd and Others* 2014 (3) BCLR 265 (CC); [2013] ZACC (48) paras 84 - 86; *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC); [2007] (10) BCLR 1027; [2007] ZACC (12) para 5 (*Goedgelegen*).

¹³ *North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd* 2013 (5) SA 1 (SCA); [2013] ZASCA 76 para 24; *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 (4) SA 399 (SCA); [2009] (2) All SA 523; [2009] ZASCA (7) para 39; *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) (*Bato Star*) paras 89 - 90 and *Jaga v Dönges NO and Another; Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662G - 663A and 664E - H.

(a).¹⁴is another well-known approach which is that words used in a statute must be interpreted in their context.¹⁵

[57] It is in this setting that s 40(8) must be interpreted. We must therefore consider s 40(8) along with the other provisions of the LPA. The first in the grid is s 41(1). Section 41(1) makes the appeal by either of the three categories of persons who may have been aggrieved either by the finding of misconduct by the DC or the sanction it imposed or both 'subject to s 44'. The use of the phrase 'subject to' is not without significance. According to the Oxford South African Concise Dictionary, 2nd Ed. 'subject to' is defined to mean 'dependent' or 'conditional upon.'

[58] The significance of s 41(1) making reference to s 44 of the LPA is that s 44(1) specifically endows the high court with the inherent jurisdiction it always historically enjoyed to exercise its supervisory and disciplinary powers over legal practitioners in cases of unprofessional conduct, such as in the present matter.

[59] The provisions of s 44(1) are significant in the interpretation of s 40(8). They contain what is the key word 'derogate.' According to the *Shorter Oxford English Dictionary* 'derogate' is defined to mean 'repeal or abrogate (in part a law etc); destroy or impair the force; effect; or authority of; take away something from; detract from.'¹⁶

[60] Section 44(1) in essence specifically retains the high court's inherent disciplinary jurisdiction to adjudicate on matters concerning the conduct of legal practitioners notwithstanding the provisions of s 40(8). Section 40(8) is therefore subject to s 44(1) and has therefore not taken away the high court's power.

¹⁴ *SATAWU and Another v Garvas and Others* 2013 (1) SA 83 (CC); (2012) (8) BCLR 840; [2012] ZACC (13) para 37.

¹⁵ *Jaga v Dönges NO and Another; Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662G-663A; *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) (*Bato Star*) paras 89-90.

¹⁶ *Shorter Oxford English Dictionary* 5 ed (2002) vol 1.

[61] The LPC as a successor in title of the now defunct provincial law societies is now a regulatory body that acts as *custo morum* of the profession as specifically mandated in terms of s 5(c), (d) and (f) of the LPA to promote public interest, regulate all legal practitioners and to enhance and maintain the integrity and status of legal profession. The LPC therefore still retains the role which was previously played by its successors-in-title to place all the relevant evidence concerning the practitioner's conduct before court as in the past. In terms of s 6(1)(a)(iv) read with s 41(1), the LPC was therefore entitled to bring this application against the first respondent. From this synopsis the decision of the DC is not binding on the LPC.

[62] The interpretation of s 40(8) postulated for on behalf of the first respondent is far from being constitutionally compliant. It is in fact in direct contradiction with the well-established technique of statutory construction as espoused by our courts including the Constitutional Court. It is also in direct contradiction with the specific injunction of s 39(2) of the Constitution.¹⁷

[63] In *Goedgelegen*¹⁸ a Constitutional Court emphasising the significance of employing the well-known approach of statutory construction of considering the social and historical background of the legislation held:

'We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole, including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This is so even when the ordinary meaning of the provision to be construed is clear and unambiguous.'

[64] Section 39(2) of the Constitution on the other hand provides that when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum, must promote the spirit, purport and objects of the Bill of Rights.

¹⁷ *Bato Star* para 91.

¹⁸ *Goedgelegen* para 53.

[65] The first respondent contends for the interpretation of s 40(8) in isolation. Such an interpretation completely ignores the mischief which the LPA sought to remedy as set out in the long title which, *inter alia*, is the 'transformation and restructuring of a legal profession in line with the constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic'. Section 3 of the LPA elaborates on the long title and provides that the purpose of the LPA is 'to broaden access to justice' ... 'to create a single unified regulatory body of all legal and candidate legal practitioners' and, most importantly, 'to protect and promote the public interest'. The interpretation postulated for by the first respondent also ignores the objectives of the LPC as set out in s 5, particularly those that are related to the promotion and protection of the public interest, the enhancement and maintenance of the integrity and status of the legal profession as well as appropriate standards of professional practice and ethical conduct of all legal and candidate legal practitioners.

[66] I disagree with Mr *Harpur* that absent an appeal by the legal practitioner, the LPC was bound by the decision of the DC. Such an interpretation does not accord with the conditional phrase which is a prefix to s 41(1) and the plain language of s 44(1). If we were to accede to that interpretation it would render the meaning of the words used in those respective provisions of the LPA nugatory.

[67] The legislature employed those specific words in those sections deliberately in recognition of the LPC's duty as a *custos morum* of the legal profession. Additionally, such an interpretation would be completely at odds with the functions, which the LPC as a regulatory body, is enjoined to exercise in terms of the LPA. This interpretation will not only lead to absurd results which were never contemplated by the Legislature but, it seeks to condemn the LPC into inaction even when the findings of the DC might be clearly wrong or the sanction it imposed might be disturbingly inappropriate for being unduly lenient. The interpretation as postulated by the first respondent, has largely been contributed to by the first respondent's mischaracterisation of the recommendation of the DOC as a decision which would have entitled the first respondent to a hearing.

[68] The consideration of the sanction by the DOC in its meeting, its ultimate resolution to recommend a strike-off application to the LPC did not constitute a decision to overturn the decision. The recommendation of the DOC simply constituted an advice as part of its functions to assist the LPC. The decision of the DC itself is extant. The meeting of the DOC, its resolution to recommend a strike-off and the ultimate decision of the LPC to institute strike-off proceedings by themselves do not constitute a strike-off entitling the first respondent to a hearing. These steps are analogous to a consultation between an aggrieved legal practitioner and his legal representative pursuant to a DC's decision to consider whether to appeal or not. An affected legal practitioner is not entitled to a hearing merely because the LPC would deliberate on issues which would potentially have adverse consequences for that legal practitioner. If that were to be so, the LPC would never be able to perform its functions efficiently.

[69] This court agrees with Mr *Harpur* that the DC, when performing its functions, is not exercising delegated powers in terms of s 6(1)(a)(x)(bb) of the LPA, but the original powers provided to it in terms of the LPA. Its decision is therefore not susceptible to being overturned by the LPC. Hence it remains extant and the subject matter of this application, which the LPC launched by virtue of the provisions of s 41(1) and 44(1). This court respectfully disagrees with *Swartz* only to this limited extent. However, apart from that there is no reason why this court cannot follow *Swartz*, as it would *Mfundisi*.

[70] There is one further aspect which merits mention, and it is the period it took the LPC to make a decision whether it would exercise its powers in terms of s 41(1). The first respondent can justifiably complain about this delay and nothing more.

Whether the first respondent should be struck off the roll of legal practitioners

[71] The test for the determination of whether a legal practitioner should be struck off the roll is trite and involves a three-stage enquiry as set out in *Jasat v Natal Law Society*¹⁹ as follows:

‘First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual inquiry. Second, the court must consider whether the person concerned “in the discretion of the court” is not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. Third, the court must inquire whether in all the circumstances the attorney is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.’

[72] In dealing with each of these three requirements, I do not deem it necessary to dissect the first of these three requirements because the first respondent pleaded guilty in respect of the offending conduct, was found guilty and sanctioned on that basis. The first respondent in this application has not impugned the process leading up to the ultimate sanction. Accordingly, the first respondent’s offending conduct has been established on a balance of probabilities.

Is the first respondent a fit and proper person taking into account the proven misconduct

[73] The first respondent’s misconduct in the main involves her failure to keep proper books of account. In the interim, and pursuant to the imposition of the sanction by the DC, the first respondent took the initiative to appoint a bookkeeper who according to the first respondent’s version prepares a reconciliation of her financial accounts on a weekly basis and thereafter submits them to her auditors. Additionally, the first respondent successfully attended training in practice management. In my view, while the misconduct in respect of which the first respondent was sanctioned is very serious it is capable of being remedied not only through continuous training but also progressive discipline, as Mr *Harpur* has

¹⁹ *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) para 10 as summarised in *Malan and Another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) para 4; *Botha v Law Society, Northern Provinces* [2009] ZASCA 13; 2009 (1) SA 227 (SCA) para 2.

correctly pointed out. From what I gather from the disciplinary record this is what persuaded the DC to impose the sanction which is the subject matter of these proceedings. What is encouraging is that the first respondent self-reported and made a full and honest disclosure in respect of her misconduct. The first respondent showed contrition for her faults. The acknowledgment of one's frailties is, in my view, a good start towards self-correction. In the circumstances, it is this court's view that the first respondent is a fit and proper person to practise as an attorney.

Should the respondent be suspended from practice for a fixed period (such suspension to be suspended) or should she be struck off the roll

[74] In *Law Society of the Cape of Good Hope v King*²⁰ Berman J stated that:

'Broadly speaking, it would appear that "striking-off" orders are reserved for cases where the attorney in question has, for his own personal use, intentionally and deliberately withdrawn moneys standing to the credit of a client in that attorney's trust account (which is plainly and simply an instance of theft) or where such attorney has manifestly overreached his client (which is nothing but a species of fraud); less serious infractions, such as those resulting from negligence or mismanagement in the administration of his office, but not involving dishonesty on his part, should attract orders of suspension from practice for a specified period, or interdicts such as that ordered in the instant case, or directing that the attorney concerned practise under supervision, or orders or directions having similar but less Draconian effects. This acknowledgment of the aforementioned trend and the approval of it as indicated by the order issued in this case is not to be understood as laying down a procedure to be followed as if it were a law of the Medes and Persians; it is readily acknowledged that in cases involving theft or fraud or dishonesty in some other form a Court may well decide in the exercise of its discretion not to strike an attorney's name off the roll and instead decide to impose a less severe punishment; similarly where infractions have taken place where dishonesty is not involved, it would still be open to a Court to impose the ultimate sanction of "striking-off".'

[75] During his argument Mr *Chetty* on behalf of the LPC conceded the first respondent's misconduct did not warrant the ultimate sanction of a strike-off. In my view, this concession was fairly made. As indicated above the first respondent's infractions, as

²⁰ *Law Society of the Cape of Good Hope v King* 1995 (2) SA 887 (C) at 892I - 892A.

much as they are of a serious nature they are capable of being remedied by the first respondent. In my view, the sanction which was imposed by the DC appears not only fair and just, but it also fits the misconduct in respect which the first respondent was found guilty and accounts for the interests of the public. This court therefore considers it appropriate and accordingly confirms it. The LPC in its decision to seek a struck off relied mainly on the first respondent's previous acts of misconduct but the first respondent faced the latest incident of misconduct for which an appropriate sanction needed to be determined. The application therefore falls to be dismissed.

[76] The parties argued that if this court found in either party's favour this court should award costs in that party's favour. Given the peculiar history of this matter as set out above which I do not propose to repeat, an order which would be just and fair in the circumstances is not to award any costs.

Order

[77] In the result I grant the following order:

1. The applicant's application is dismissed;
2. There is no order as to costs.



Chithi J

I agree



Mngadi J

I agree

PP. 

D Pillay AJ

APPEARANCES

For Applicant : Chetty S N
 Instructed by : **MESSRS SIVA CHETTY**
 Town Bush Office Park
 Block C, Second Floor, Suite 10
 460 Townbush Road, Montrose
 Pietermaritzburg
 3201
 Tel: 033 342 9636
 Email: sumaya@sivachetty.co.za
 Ref: MR S N CHETTY/Komesh/LPC174

For First Respondent : Harpur G D
 Instructed by : **DE VILLIERS EVANS & PETIT**
 262 Musgrave Road
 Durban
 Docex 6, Durban
 Tel: 031 207 1515
 Email: pcombrink@dep.co.za
 Ref: P Combrink/oj/02V032001
c/o STOWELL & CO.
 295 Pietermaritz Street
 Pietermaritzburg
 Tel: 033 845 0500
 Email: paulf@stowell.co.za
 Ref: Paul Firman/Zelda

Date of hearing : 31 October 2025

Date of judgment : 27 February 2026