

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-070374

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO

04 SEPTEMBER 2026
DATE


SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

And

MDUDUZI BRANDON TSHABANGU

First Respondent

TSHABANGU (M.B) INCORPORATED ATTORNEYS

Second Respondent

Heard on: 28 July 2026

Delivered on: 04 September 2026

*This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand-down is deemed to be **04 September 2026**.*

JUDGMENT

KEKANA AJ (HOLLAND-MUTER J CONCURRING)

Introduction

[1] This is an application brought by the Legal Practice Council (LPC) in which the Council seeks an order striking the first Respondent from the roll of legal practitioners. The Respondents are opposing the application.

Background

[2] The first Respondent was admitted as an attorney, notary and conveyancer of this Honourable Court on 15 August 2013, 6 February 2018 and 27 July 2020, respectively. He practices as a single practitioner under the name Tshabangu (M.B) Incorporated Attorneys in and around Pretoria and Johannesburg. The Legal Practice Council received numerous complaints regarding the conduct of the respondent.

Kgoedi complaint

[3] This complaint relates to, inter alia, the irregular administration of trust funds. The Council instructed an auditor, Philasande Nyali, to conduct an inspection of the Respondents' accounting records and practice affairs and to investigate the complaint, levelled against the respondent.

Report by Nyali dated 25 April 2024

The Sale Transaction and Escrow Agreement – Cometa & BHP (purchasers) and NKK Minerals & RO Kgosana (sellers)

[4] The report can be summarised as follows:

4.1 a sale transaction was concluded in terms of which the purchasers (Cometa and BHP) would purchase certain mining rights from the sellers (NKK Minerals and Ronald Kgosana) utilising the services of the Respondents;

4.2 an “escrow” agreement was concluded between the purchasers (BHP) and the first Respondent’s firm, in terms of which the R6 million would be paid into the Respondents’ trust account, and would be disbursed by the Respondents to the sellers after fulfilment of the conditions;

4.3 the Respondents were required in the interim, in terms of the escrow agreement, to invest the funds in an account contemplated in section 86(4) of the LPA, and the interest on those funds would accrue for the benefit of the purchasers;

4.4 the R6 million was indeed paid into the first Respondent’s trust account on 25 August 2022;

4.5 within less than a month after it had been deposited, the R6 million was transferred out of the first Respondent’s trust account, with R3 million being

transferred to "Tshabangu Holdings", an entity to which the first Respondent is the sole director;

4.6 the purchasers confirmed that these funds were transferred out of the first Respondent's trust account without their knowledge and contrary to the terms of the escrow agreement.

Moripe Complaint

[5] The first Respondent received a transfer instruction as far back as April 2021 but only managed to carry out the instruction and effect the transfer of the property more than two and a half years later, on 27 November 2023. Subservient to this complaint, it was found by Council that a year and a half before the transfer was registered, the first Respondent had already paid out the proceeds of the sale to the seller. This was found to be highly irregular, amounting to misconduct, if the proceeds of the sale were paid out before registration of transfer.

Sibanyoni Complaint

[6] The Legal practice council referred this complaint to the first Respondent on 19 August 2022 and requested him to respond in writing to the complaint by 9 September 2022. The first Respondent did not respond to the complaint in writing, as requested by the Legal Practice Council.

Alleged Contraventions

[7] The Applicant lists numerous contraventions by the first Respondent; these include contravention of provisions of the Legal Practice Act, the LPC Rules and the Code of Conduct for Legal Practitioners. The alleged contraventions can be summarised as follows:

- 7.1 failure to cooperate with the Legal practice council in an inspection of the firm's accounting records and practice affairs;
- 7.2. failure to keep proper accounting records in respect of his practice;
- 7.3 submission of an annual auditor's report to the Legal practice council which contained false information;
- 7.4 misappropriation of trust funds;
- 7.5 failure to report the existence of trust deficits in the firm's trust banking account to the Council;
- 7.6 dishonesty in the manner in which he has conducted himself in practice and in his engagements with the Legal practice council;
- 7.7 failure to use his best efforts to carry out work in a competent and timely manner;
- 7.8 failure by the first respondent to comply with the LPC's requests and/or directions;
- 7.9 failure to comply with the Court order of 5 November 2024;
- 7.10 contempt of Court.

[8] In his response towards the complaints, the first Respondent states that:

8.1 he had always cooperated with the inspection, insisting that he had already provided the information that was requested by the auditor;

8.2 the first Respondent admits that he did not place the funds from the escrow agreement in the trust account contemplated in terms of section 86(4), but instead invested the same funds in various mining projects, allegedly at the instruction of the seller;

8.3 on the Moripe complaint, the first respondent states that registration of transfer in the Deeds Office is notoriously slow, that obtaining a clearance certificate is cumbersome and that transfer had to take place from an estate (in respect of which the Respondent was not in control) to Popa to Moripe;

8.4 on the Sibanyoni complaint, the first respondent states that bald allegations made by the Applicant do not pass muster.

Submission by parties

[9] The applicant submits that:

9.1 the first Respondent did not cooperate with the inspection as required by the rules in that he did not reply to emails from Nyali which were sent in May 2023, and that he eventually sent the auditor some information in January 2024 in confirmation that he was aware that same was never shared before. Even the information he shared with Nyali was not complete as it did not contain the

first Respondent's business bank statements therein; thus, he did not comply with the inspection.

9.2 the first Respondent's practice as an attorney presents a clear risk to the public and that his conduct is characterised by inherent dishonesty.

9.3 the nature and gravity of the misconduct are such that suspension would not suffice but rather the first respondent should be struck off the roll of attorneys.

[10] The respondent contends that:

10.1 that the Legal practice council "overstepped the mark" and investigated matters which were not the subject matter of complaints;

10.2 that the investigation was procedurally flawed, that Mr Nyali was biased, and that the first Respondent was not afforded a fair hearing;

10.3 the trust account was not handled properly in that monies were transferred from the trust account but were not misappropriated;

10.4 though there may be a transgression of the rule, such transgressions cannot warrant ultimate sanction from striking off the roll.

Legal principles and analysis

[11] Our courts have consistently applied, and it has become settled law, that applications of this nature brought in terms of section 44(1)¹ involves a threefold enquiry:

- (a) firstly, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry;
- (b) secondly, it must consider whether the person concerned, in the discretion of the court, is not a fit and proper person to continue practice. 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;
- (c) thirdly, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys, or whether an order of suspension from practice will suffice.

[12] It remains undisputed that there was misappropriation of trust funds by the first Respondent. The first Respondent used the trust funds for personal benefit, in that an amount of R3 million was transferred from the trust account into the account of his other company, Tshabangu Holdings. It is clear from the evidence before me that while the report from Nyali shows that an amount of R3 million was transferred from the trust account into the first Respondent's other entity, Tshabangu Holdings, the conclusion is strong that the first Respondent has embezzled the entire R6 million belonging to the client.

¹ Legal Practice Act (LPA) Act No. 28 of 2014.

[13] The evidence before me is that upon cancellation of the escrow agreement, the first Respondent could not make R6 million available; again, even the remaining R3 million was nowhere to be found. Instead, the first Respondent had to sign an acknowledgement of debt (AOD) annexure "MBSA1" where he had to repay the whole R6 million in instalments. The notice of payment ("Annexure "MBSA2") shows that he paid an amount of R350 000 on 30 June 2026 as per clause 4.1.1 of the AOD and he is expected to thereafter pay a monthly amount of R500 000 on the first day of the succeeding months until the full outstanding balance is settled as per clause 4.1.2 of the AOD.

[14] There is evidence of dishonesty on the part of the first Respondent. The Supreme Court of Appeal (SCA) has also stressed that the profession of an attorney is an honourable one and, as such, demands complete honesty, reliability and integrity from its members².

[15] As mentioned in *Summerley v Law Society Northern Provinces*³, the fact that a court finds that an attorney is unable to administer and conduct a trust account does not mean that striking-off should follow as a matter of course. The converse is, however, also correct: it does not follow that striking-off is not an appropriate order⁴.

[16] In the present case I find the conduct of the first Respondent to have caused irreparable damage to the profession and its image. Tampering with the trust funds in the manner he did has broken the trust that should be there between an attorney and the public.

² *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G.

³ 2006(5) SA 613(SCA) at para 15.

⁴ *Malan v The Law Society of the Northern Provinces* (568/2007) [2008] ZASCA 90 at para 11.

[17] As regards the Moripe complaint, the first Respondent not only failed to execute the mandate diligently but also placed his client at risk when he paid the seller before the transfer was registered. It could have turned much worse had the transfer not taken place; I find the conduct of the first Respondent amounting to misconduct. Paying the seller prematurely violates professional conveyancing rules and creates severe financial risks.

[18] As regards Sibanyoni complaint, the first Respondent contends that there is no detail as to when and what the amount was involved and that Mr Nyali did no more than to sit in his office and wait for the Respondents to feed him with information in respect of facts that he did not care to establish. The first Respondent adopts a wrong attitude towards the process. The first Respondent fails in his obligations towards the public and those who complained of his conduct in particular.

[19] The first Respondent also failed to answer the correspondence addressed to him by the Applicant in this regard. In ***Hepple and Others v The Law Society of the Northern Provinces***⁵ the SCA confirmed that the proceedings in applications to strike attorneys from the roll are not ordinary civil proceedings but that they are proceedings of a disciplinary nature and are *sui generis*. The court confirmed the duty resting on an attorney in these kinds of proceedings in the following dictum:

"It follows, therefore, that where allegations and evidence are presented against an attorney, they cannot be met with mere denials by the attorney concerned. If allegations are made by the Law Society and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside; the attorneys are expected to respond meaningfully to them and to

⁵ 2014 (3) All SA 408 (SCA) at para 9.

furnish a proper explanation of the financial discrepancies as failure to do so may count against them."

[20] Once a complaint is lodged with the LPC and the practitioner is notified thereof and is given an opportunity to respond; the practitioner must be comprehensive in his or her response. A practitioner facing discipline is expected to "declare the relevant facts fully and openly" from the outset. A practitioner's duty to cooperate is a legal obligation. It will be wrong for the practitioner to adopt a 'catch me if you can attitude'.

[21] The first Respondent's argument that Legal practice council overstepped the mark and investigated matters which were not the subject matter of complaints cannot be sustained in that the Applicant is a regulatory body that regulates the conduct of its members; it could turn a blind eye and ignore other serious misconduct if those serious misconducts are found during the course of its investigation of the complaints.

[22] The first respondent's attack on the conduct of the applicant, the auditor and his report, is found wanting in that the process was investigative, not adjudicative; it is the court that has the authority to adjudicate.

[23] I agree with the counsel for the applicant that these are not review proceedings directed at an administrative decision by the Legal practice council. Before us are disciplinary proceedings concerning the conduct of one of its officers. Any allegation of bias on the part of Mr Nyali or imperfections on the side of the Applicant will have to be adjudicated upon by this Court before making its findings, and the first Respondent has the opportunity to present his side before this Court. It was held in **Hassim v**

Incorporated Law Society of Natal that the Applicant, as *custos morum* of the profession, merely place facts before the Court for consideration⁶.

[24] I find that the Applicant was able to present evidence demonstrating various contraventions of the provisions of the Legal Practice Act, the LPC Rules and the Code of Conduct for Legal Practitioners by the first Respondent. The applicant was able to prove and establish offending conduct on a preponderance of probabilities.

[25] The second question to the inquiry that follows then is whether the first Respondent is, in the discretion of the court, not a fit and proper person to continue practice. Courts, in exercising discretion, will consider all facts in their totality and will not consider each issue in isolation⁷. Put differently, the facts must be considered cumulatively, not piecemeal.⁸

[26] Regarding the discretion of the court, it was held in **Naylor v Jansen**⁹ that in exercising this discretion the court is not bound by rules, and precedents consequently have a limited value. All they do is indicate how other courts have exercised their discretion in the circumstances of a particular case. Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a court were bound to follow a precedent in the exercise of its discretion, it would mean that the court has no real discretion.

[27] The first Respondent did not cooperate with the investigation, did not provide the information as directed by the court order of 5 November 2024. The first

⁶ 1977(2) SA 757(A) at 767C-G. See also *Law Society Transvaal vs Matthews* 1989(4) SA 389(T) at 393 E.

⁷ *Beyers v Pretoria Balie Raad* 1966 (2) SA 593 (A) at 606B.

⁸ *Malan and Another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) paras 4 – 5.

⁹ 2007 (1) SA 16 (SCA) at para 21.

Respondent has been found to be in contempt of court in that he did not hand over client files; additionally, he did not refrain from practising on his own account as ordered by the court under the same order of 5 November 2024. The first Respondent has been found to have misappropriated trust funds. Misappropriation of trust funds is a serious contravention of the rules, and as such I am of the view that the first Respondent is not fit and proper to continue practising as an attorney of this Court.

[28] Having found that the first Respondent is not fit and proper to continue practising as an attorney, the third leg of the enquiry to be considered by this Court is whether in the circumstances the first Respondent is to be removed from the roll of attorneys, or whether an order of suspension from practice will suffice.

[29] The first Respondent was ordered to attend and complete a Practice Management Training Course by 5 September 2025; there was evidence presented showing that the first Respondent has successfully attended and completed the course. Counsel for the Respondents argued that the first Respondent is a young practitioner who has demonstrated intentions to remain relevant and succeed in the legal profession.

[30] The first Respondent was admitted as an attorney in 2013, admitted as a notary in 2018, and admitted as a conveyancer of this Honourable Court in 2020. This clearly indicates that the first Respondent wants to grow in the profession; as such, the court is requested to show mercy to the first Respondent, at least by not imposing the ultimate sanction of striking him off the roll of attorneys.

[31] While misappropriation of trust funds is a serious form of misconduct, evidence before this court shows a commitment from the first Respondent to pay back the R6

million he embezzled, and again there is evidence of adherence to the signed AOD. Additionally, there is evidence of attendance and successful completion of the Practice Management Training Course. Central to the first Respondent's case is non-compliance with the court order, which the first Respondent attributes to misinterpretation of the court order. This cannot be used as an excuse for an officer of the court to disregard orders of this court.

[32] As regards the Moripe and Sebanyoni complaints, while I find that there was misconduct on the part of the first Respondent in the manner he handled these matters, I am of the view that the misconduct does not warrant the ultimate sanction of striking off the first Respondent from the roll of attorneys.

Conclusion

[33] The Applicant has established on a balance of probabilities that the first Respondent has engaged in serious professional misconduct. While it is the view of this Court that the first Respondent is not a fit and proper person to continue to practise as a legal practitioner, there is also evidence that misappropriation of trust funds was a once-off affair and the first Respondent has demonstrated some remorse, acknowledged his wrongful conduct in the manner he approached the matter. Consequently, it is the view of this Court that striking off is not the plausible sanction but rather a suspension from practice will suffice.

Costs

[34] The Applicant approaches the Court under a public duty and not as an ordinary litigant; Council ought to be reimbursed to the full extent possible. The first Respondent

has failed to comply with his lawful obligations. There is no reason to substantiate deviation from the general rule, and for that reason the punitive costs should be applicable.

Order

[35] In the circumstances, the following order is made:

1. That Mduduzi Brandon Tshabangu is suspended from practising as a legal practitioner for a period of three years subject to the following conditions;
 - 1.1. During the period of suspension in prayer 1 supra, the first Respondent may engage in employment as an employee with a senior attorney under the direct supervision of such senior attorney with at least 15 years of experience as an attorney. Before entering into a contract of employment with such attorney, the first Respondent must submit the full particulars of the attorney to the Legal Practitioners Council for verification that such attorney is in good standing with the Legal Practitioners Council.
 - 1.2. Should the first Respondent enter into any contract of employment with any attorney within the period of suspension as set out supra, the first Respondent shall only be entitled to a remuneration as employee and shall not practise for own account or enter into any legal partnership agreement with such attorney or any other attorney.

- 1.3 The senior attorney supra shall every six (6) months of employment of the first Respondent report to the Legal Practitioners Council on the progress and compliance with the suspensive conditions applicable on the first Respondent during his suspension.
- 1.4. The first Respondent shall continue with his obligations under the written acknowledgement of debt signed by himself in his capacity as the Escrow Agent with the creditor Comota on 25 June 2026 with the continued monthly repayment of the amount of R 500 000-00 per month on the outstanding balance as set out in the acknowledgment of debt arising from the infringement which resulted in the suspension of first Respondent.
- 1.5 Should the first Respondent fail to comply with any of the conditions in the order in prayers 2 to 5 supra, the Legal Practitioners Council may approach the court on the amended papers for adequate relief.
- 1.6 The first Respondent and senior attorney under whose supervision the first Respondent was employed, shall, when the term of suspension is served, report to the Legal Practitioners Council on the progress of the first Respondent and whether the first Respondent repaid the loss resulting from the infringement which caused his suspension. The Legal Practitioners Council may then find whether the first Respondent is fit

and proper to practice and may consent to the first Respondent to thereafter practice for own account.

2. That the first Respondent is ordered to pay the costs of this application on an attorney-and-client scale, which shall include the reserved costs of 23 July and 5 November 2024.



ND KEKANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I concur; it is so ordered.


J HOLLAND-MUTER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing:

28 July 2026

Judgment delivered:

04 September 2026

Appearances

Counsel for the Applicant:

Mr. Marinus Steenkamp

Instructed by:

Rooth Wesseis Attorneys

Counsel for the Respondents:

Adv FW Botes SC

Instructed by:

MT Makhubela Inc Attorneys