

SOUTH AFRICA / JUDGMENT

Dlamini Incorporated and Another v Legal Practice Council of South Africa and Another (2025-064733) [2025] ZAGPPHC 621 (23 June 2025)

[2025] ZAGPPHC 621

COURT

North Gauteng High Court, Pretoria

BEFORE

N Rajab-Budlender

CASE / FILE NUMBER

2025-064733

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 2025-064733

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE

23 June 2025

SIGNATURE

In

the matter between: DLAMINI
INCORPORATED
First Applicant
JOHANNA
DAVIDS
N.O
Second Applicant
and
THE
LEGAL PRACTICE COUNCIL OF SOUTH AFRICA
First Respondent
THE
OFFICES OF THE LEGAL SERVICES OMBUDSMAN
Second Respondent
And
In

the counter-application between: THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
Applicant
DLAMINI
INCORPORATED
First Respondent
JOHANNA
DAVIDS N.O
Second Respondent
FALLON
MALISSA LETSOALO
Third
Respondent
PAULA
SINDISO ZIKHALI
Fourth
Responden

JUDGMENT

RAJAB-BUDLENDER AJ

Background to this application

- [1] This application was brought on an urgent basis and came before me on the urgent roll with the Applicants seeking the confirmation of a rule nisi made by Khumalo J on 21 May 2025.

- [2] In summary, Ms Dlamini, the sole director and shareholder of the First Applicant (“the deceased director”) passed away on 10 October 2024. On 3 February 2025 the Applicants allege that the directorship was “changed” to that of Paula Sindiso Zikhali and Fallon Malissa Letsoalo (“the new directors”). No details are provided on the papers of how these directors were appointed or who appointed them. The Second Applicant was appointed by the Master as the Executrix of the estate of the deceased on 15 November 2024.
- [3] The Applicants allege that upon notifying the LPC of the death of the sole director and shareholder of the First Applicant (“the firm”), the LPC treated the firm as though it had ceased to exist, instructing its representatives to stop trading and notifying the firm’s bank that its accounts should be frozen. There was some confusion on the part of the Applicants as to whether the LPC had deregistered the firm which naturally had consequences for the firm’s ability to conduct business.
- [4] Although the matter was placed on the urgent court roll before Khumalo J as well as before me, urgency was not at issue between the parties. I accept that given the interests of clients and creditors of the firm, the matter is sufficiently urgent to be heard in this Court.

The Relief Sought

- [5] The Applicants seek declaratory relief that the firm did not cease to exist because of the passing of its sole director and shareholder, the late Nthabiseng Eunice Dlamini and that it instead continues to constitute a separate legal entity and a firm of attorneys as defined in terms of the Companies Act 71 of 2008 and the Legal Practice Act 28 of 2014 (“the LPA”).
- [6] It also seeks further relief related to the setting aside of any and all steps taken and instructions issued by the Legal Practice Council (“the LPC”) as a consequence of Dlamini’s passing. These steps relate to the deregistration of the firm, and instructions issued to the firm to cease all trading activities.
- [7] Finally, the Applicants seek an order that the LPC is directed to re-register the firm in terms of section 34 of the LPA.
- [8] On 21 May 2025, Khumalo J issued a rule nisi for the relief set out above and in addition interdicted the LPC from:
- a. Insisting and dealing with the firm as an attorneys firm that has ceased to exist;
 - b. Taking any decisions and/or steps, including the appointment of third parties to terminate any and all mandates held by the firm in respect of existing and/or future clients and/or to hand over any or all files to such LPC appointed third parties; and/or
 - c. Generally taking any steps that interfere with the operations and business of the firm.

- [9] Khumalo J further directed the LPC to investigate and report in writing to this Court in respect of the status of the firm within the LPC's records and the status of the newly appointed directors of the firm with specific reference to whether or not they are fit and proper persons and with respect to fidelity fund certificates issued or to be issued to them.
- [10] The LPC duly filed such report. I return to the contents thereof below.
- [11] The LPC opposed confirmation of the rule nisi and launched an urgent counter-application, citing the new directors in addition to the firm and seeking an order that the new directors should be prohibited from handling and/or operating the firm's trust account. It also seeks an order that the Office of the Director or Acting Director of the Gauteng Provincial Office of the LPC be appointed as curator bonis to administer and control the trust account/s of the deceased including accounts relating to insolvent and deceased estates and any deceased estate under curatorship connected with the firm and deceased director's practice as an attorney and including the separate bank accounts opened and kept by the firm and the deceased director and/or any separate savings or interest bearing accounts as contemplated by sections 86(3) and 86(4) of the LPA in which monies from such trust banking accounts have been invested ("the trust accounts").
- [12] The counter application further seeks an order setting out the powers of the curator which are extensive and essentially deal with meeting claims of trust creditors. It also includes an order permitting the curator to wind up the firm and deceased director's practice.
- [13] The Applicants objected strongly to the relief sought in the counter application and indeed to the consideration of the counter application by this Court due to the lateness of its submission. During argument Counsel for the Applicants indicated that they no longer objected to the citing of the new directors in the counter application. Given the importance of the matter to creditors and clients of the firm, I admitted the counter-application and heard argument on both the application and counter-application.

The Rule Nisi

- [14] I am called upon to decide whether to confirm or discharge the rule nisi issued on 21 May 2025 by Khumalo J.
- [15] That involves a consideration of the relief sought by the Applicants in their notice of motion.
- [16] The declaratory relief sought is that the first applicant did not cease to exist as a separate legal entity after the deceased death, and that any steps taken or instructions issued by the LPC as a consequence of her passing are unlawful and set aside.
- [17] The Applicant is a personal liability company as contemplated in section 8(2)(c) of the Companies Act 71 of
2008. A personal liability company is distinct from a private company and the rules which follow the death of the sole director and shareholder of a personal liability company are therefore different from a private company. Under our law, it is permitted for a company to conduct

a legal practice. This was initially contemplated in section 23(1) of the now repealed Attorneys Act and is currently provided for in section 34(9)(a)(i) of the LPA which provides that a commercial juristic entity may be established to conduct a legal practice provided that in its founding documents its shareholding, partnership or membership as the case may be is comprised exclusively of attorneys and all present and past shareholders, partners or members are liable jointly and severally together with the commercial juristic entity for the debts and liabilities of the entity during their period of office.

- [18] The LPC argues that in the case of a firm such as the First Applicant, the effect of the death of the sole director and shareholder is that the firm may no longer continue to operate without a director. It seems common cause on the papers that Ms Dlamini died without a will at least in respect to her shareholding and directorship of the firm. The Articles of Association of the firm do not permit the executor to elect a director or exercise any of the rights of director other than to receive dividends in relation to the deceased director's shares. Therefore when the deceased passed away there was effectively no one in control of the firm requiring the LPC to take over in a caretaker function pending either the appointment of new directors or the appointment of a curator.
- [19] I therefore find no basis to confirm the rule nisi in relation to the first declaratory order sought.
- [20] The second component of the declaratory relief is equally stillborn. The LPC have denied in the papers before me that they deregistered the firm, instructed the firm to cease trading activities and/or transferred any files to third party attorneys.
- [21] The LPC states that it is not empowered to and does not keep a roll relating to juristic entities and therefore cannot register or deregister a firm of attorneys. The only time the LPC could conceivably be considered to have caused the deregistration of an entity would be when it brings an application to court to wind up a juristic entity in terms of section 40(3)(b)(iv) of the LPA – but that has not happened in this case, and that is a decision of a court and not of the LPC.
- [22] The Applicants answer to the LPC is that the LPA makes provision for the recognition of a juristic entity from which attorneys practice in section 34(5) of the Act. But that section does no more than set out the forms of legal practice and provides that attorneys may practice as part of a commercial juristic entity. Moreover, the Applicants refer to a document from the LPC setting out new practice requirements in which it is stated that some banks may request a letter from the LPC to confirm that the person is registered as an attorney and that in that case practitioners may request such a letter from the LPC. Again, the Applicants miss the mark because the notice specifically addresses itself to individual practitioners who require confirmation that they are registered as an attorney – and not that a firm is registered as a firm of attorneys with the LPC. This is reinforced by the fact that in the very next section of the document under “FICA Registration” it states that all attorneys' firms must register with the Financial Intelligence Centre. Clearly a distinction is drawn between registration of

individual practitioners

– which falls within the LPC’s remit and that of the FIC which requires registration by attorneys’ firms –

something the LPC does not have the power to do.

[23] The papers before this Court indicate that the LPC did request that Standard Bank should freeze the firm’s trust account as a result of the death of the sole director and shareholder. This took place after the firm informed the LPC of the death of the deceased. In argument counsel for the Applicants indicated that the unfreezing of the bank account was

in fact the primary relief sought by the applicant – but accepted that this was not relief actually sought on the papers.

He attempted to amend the relief sought during argument, but the papers do not make out a case for the unfreezing of the Bank accounts

and I am unable to grant such relief.

[24] The final aspect of the declaratory relief sought is to direct the LPC to retrospectively register the firm – but as pointed out above the LPC has no power to do so and the relief is therefore not competent.

[25] For all these reasons there is no basis for the declaratory relief sought.

[26] The remainder of the relief sought by the Applicant seeks to interdict the LPC from interfering in the operation and business of the firm.

[27] In relation to the interdictory relief the LPC contended that it has not sought to interfere in the operation and business of the firm. It has not taken control of or directed the reallocation of client files nor has it taken any other steps to interfere in the running of the firm. The interdictory relief is not appropriate in light of my findings in relation to the powers of the LPC and in relation to the counter application, to which I now turn.

The Report of the LPC

[28] The Report filed by the LPC raises the following concerns its investigation into the firm has revealed:

- a. The manner in which the new directors were appointed is mysterious and cause for concern. In this regard, I note that the papers are vague in the extreme as to precisely how the new directors were appointed after the deceased’s death. The founding affidavit states in this regard that “on 3 February 2025, the directorship was changed to that of Paula Sindiso Zikhali and I.” The Report citing the firms Articles of Association points out that the Executor did not have the power to elect new directors – therefore how the new directors were appointed remains a mystery. As pointed out above, the Executor did not have the power under the Articles of Association to appoint new directors. The notable absence of

any proper explanation of how new directors were appointed on the papers is cause for concern and suggests that their appointment may have been improper. However, I make no finding on this as I do not have sufficient evidence before me to do so. Related to this is the question of the whether the new directors are fit and proper.

- b. The Report raises concerns with the conduct of Ms Zikhali and concludes that she may have committed criminal offences on numerous occasions over extended periods of time. In relation to Ms Letsoalo, the report raises questions around her practice during various periods without a fidelity fund certificate and as a director of a company which failed to lodge its annual returns while she was a sole director of the company.
- c. Of particular concern are payments made from the trust account after the deceased's death. A total amount of R457,088.77 was transferred out of the trust account by way of 15 transactions after the deceased's passing. The Applicants state that these are of no concern. They refer in this regard to an email from the firm's accountant explaining what transpired. According to the accountant, the deceased had a savings account and the funds for her funeral and other costs were paid out of the trust account instead of the savings account in error. The accountant says "all transactions are accounted for". This is simply not a sufficient answer in my view and the flippant manner in which the Applicants have addressed these transactions itself suggests that supervision of the Trust account is required. An amount of R310 534.17

has been repaid into the trust account and the Applicants have tendered to repay the balance once the trust account has been unfrozen. The LPC has not received any formal communication to this effect before this matter was heard.

- d. The LPC has also raised concerns about the manner in which the second applicant, the executor, has dealt with the trust account suggesting that in her view the trust account is an asset in the estate rather than separate to the estate and which has to be managed in the best interest of trust creditors.

Relevant provisions of the LPA

- [29] Section 89 of the LPA provides that the Court may on application by the Council prohibit a legal practitioner from operating in any way on his/her trust account and that the Court may appoint a curator bonis to control and administer the legal practitioner's trust account with any rights, powers and functions in relation thereto as the Court may deem fit.
- [30] Section 90(1) of the LPA provides that if a legal practitioner dies the Court may on application made by the Council appoint a curator bonis to control and administer the deceased legal practitioner's trust account, with any rights powers and functions as the court may deem fit.
- [31] The LPC applies in its counter application for the appointment of a curator bonis. In her answering affidavit to the counter application, Ms Zikhali, one of the new directors of the firm states that the Applicants are not opposed to the appointment of a curator bonis - "No

one has ever opposed or challenged the appointment of a curator bonis by the LPC.” This is at odds with the Applicants’ position in the main application in which Counsel indicated that the Applicants require the unfreezing of the trust account for the firm to operate and that the LPC’s failure to do so is hindering its ability to operate. Indeed the entire premise of the relief sought in the main application is to resist any control by the LPC. It is difficult therefore to reconcile these two stated positions on behalf of the firm.

Findings

- [32] Having considered all the papers and submissions made, I am of the view that of importance here is the protection of the interests of trust creditors. There are, in my view, sufficient reasons set out in the counter application to warrant the appointment of a curator bonis as sought in the counter application.
- [33] It would appear that the manner in which the LPC engaged with the Applicants leaves much to be desired. It is unfortunate that this has caused extended uncertainty and distress to the family of the deceased and to those employed by the firm. However, the shortcomings of the LPC are not sufficient to permit me to overlook the genuine concerns raised by the LPC report into the management of the firm and of the Trust account.

Order

- [34] The matter is urgent.
- [35] The rule nisi is discharged.
- [36] The Applicants are to pay the costs of the main application on Scale C.
- [37] The third and fourth respondents in the counter-application and any other person who may have access thereto, are prohibited from handling or operating the trust account(s) of the first respondent in the counter application, the late Nthabiseng Eunice Dlamini (“the deceased director”).
- [38] Ignatius Wilhelm Briel or the person who holds the office of the Director or Acting Director of the Gauteng Provincial Office of the Legal Practice Council, is appointed as the curator bonis (curator) to administer and control the trust account(s) of the deceased director including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the first respondent’s and the deceased director’s practice as an attorney and including also, the separate banking accounts opened and kept by the first respondent and the deceased director at a bank in the Republic of South Africa in terms of section 86(1) and 86(2) of the Legal Practice Act (“LPA”) and/or any separate savings or interest bearing accounts as contemplated by sections 86(3) and 86(4) of the LPA, in which monies from such trust banking accounts have been invested by virtue of the said provisions of the said sub-sections or in which monies in any manner have been deposited or credited (“the trust accounts”) with the following powers and duties:

- a. immediately to take possession of the first respondent's and the deceased director's accounting records, records, files and documents as referred to in paragraph 4 and subject to the approval of the board of control of the Legal Practitioners Fidelity Fund (hereinafter referred to as the Fund) to sign all forms and generally to operate upon the accounts, but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the first respondent and the deceased director was acting at the date of this order;
- b. subject to the approval and control of the board of control of the Fund and where monies had been paid incorrectly and unlawfully from the undermentioned accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the accounts and/or against the first respondent and the deceased director in respect of monies held, received and/or invested by the first respondent and the deceased director in terms of section 86(3) or 86(4) of the LPA (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the first respondent and the deceased director was and may still have been concerned and to receive such monies and to pay the same to the credit of the accounts;
- c. to ascertain from the first respondent's and the deceased director's accounting records the names of all persons on whose account the first respondent and the deceased director appears to hold or to have received monies (hereinafter referred to as trust creditors); to call upon the second to fourth respondents to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;
- d. to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the Fund, to determine whether any such trust creditor has a claim in respect of monies in these accounts of the first respondent and the deceased director and, if so, the amount of such claim;
- e. to admit or reject, in whole or in part, subject to the approval of the board of control of the Fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;
- f. having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the Fund;
- g. in the event of there being any surplus in the accounts of the first respondent and the deceased director after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the Fund in terms of section 86(5) of the LPA in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the first respondent and the deceased director the costs, fees and expenses referred to in paragraphs 9 and 10 of this order, or such

portion thereof as has not already been separately paid by the first respondent and the deceased director to applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the Fund, to the first respondent or the deceased director, if they are solvent, or, if the first respondent or the deceased director is insolvent, to the trustee(s) of their insolvent estate;

- h. in the event of there being insufficient monies in the banking accounts of the first respondent and the deceased director in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the banking accounts amongst the trust creditors alternatively to pay the balance to the Fund;
- i. subject to the approval of the chairman of the board of control of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and
- j. to render from time to time, as curator, returns to the board of control of the Fund showing how the accounts of the first respondent and the deceased director has/have been dealt with, until such time as the board notifies him that she may regard her duties as curator as terminated.

[39] That the first to fourth respondents immediately deliver the first respondent's and the deceased director's accounting records, records, files and documents containing particulars and information relating to:

- a. any monies received, held or paid by the first respondent and the deceased director for or on account of any person while practising as an attorney or purporting to practise as an attorney;
- b. any monies invested by the first respondent and the deceased director in terms of section 86(3) or 86(4) of the LPA;
- c. any interest on monies so invested which was paid over or credited to the first respondent and the deceased director;
- d. any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the first respondent and the deceased director, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
- e. any insolvent estate administered by the first respondent and the deceased director as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

- f. any trust administered by the first respondent and the deceased director as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
- g. any company liquidated in terms of the Companies Act, No 61 of 1973, administered by the first respondent and the deceased director as or on behalf of the liquidator;
- h. any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the first respondent and the deceased director as or on behalf of the liquidator; and
- i. the first respondent's and the deceased director's practice as an attorney of this Honourable Court,

to the curator appointed in terms of paragraph 1 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the first to fourth respondents shall be entitled to have reasonable access to them but always subject to the supervision of such curator or her nominee

[40] That should the first to fourth respondents fail to comply with the provisions of the preceding paragraph of this order on service thereof upon them either personally or by way of email or after a return by the person entrusted with the service thereof that he/she has been unable to effect service thereof on the respondents, the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and

to deliver them to such curator.

[41] That the curator shall be entitled to:

- a. hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;
- b. require from the persons referred to in paragraph 6.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the first respondent and/or the first respondent's clients and/or Fund in respect of money and/or other property entrusted to the first respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
- c. publish this order or an abridged version thereof in any newspaper he considers appropriate;
- d. wind-up of the first respondent's and the deceased director's practice; and

- e. instruct auditors to inspect the first respondent's and the deceased director's accounting records and to, inter alia, ascertain the true status thereof.

[42] That if there are any trust funds available the first and second respondents shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to the first or second respondent in respect of first respondent's and deceased director's practice, and should they fail to do so, they shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as they may have against the trust creditor(s) concerned for payment or recovery thereof.

[43] That a certificate issued by a director of the Attorneys Fidelity Fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

[44] The first and second respondents are ordered:

- a. to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the first respondent and the deceased director;
- b. to pay the reasonable fees of the auditor engaged by applicant;
- c. to pay the reasonable fees and expenses of the curator, including travelling time;
- d. to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid; and
- e. to pay the expenses relating to the publication of this order or an abbreviated version thereof.

[45] The respondents in the counter application are ordered to pay the costs of the counter application jointly and severally on the attorney and client scale.

N. RAJAB-BUDLENDER AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant:

For the Respondent:

Adv S Aucamp and Adv E Nhutsve instructed by Ngudle Attorneys Incorporated.

Adv Collet instructed by Rooth & Wessels Incorporated.

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