

SOUTH AFRICA / JUDGMENT

Free State Law Society v Gresse (5224/2015) [2015] ZAFSHC 253 (10 December 2015)

[2015] ZAFSHC 253

COURT

Free State High Court, Bloemfontein

BEFORE

K.J. Moloi, B.C. Mocumie

CASE / FILE NUMBER

5224/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

No.: 5224/2015

In

the matter between:

FREE
STATE LAW
SOCIETY
Applicant
and
DEON
JACQUE
GRESSE
Respondent
(ID:
[.....])

CORAM: MOCUMIE et MOLOI, JJ
HEARD

ON: 03 DECEMBER 2015

JUDGEMENT

BY: MOLOI, J

DELIVERED ON: 10 DECEMBER 2015

- [1] This is an application by the Free State Law Society for the striking-off the roll of an attorney practising in the province. The respondent is an attorney and practise in partnership at Kroonstad in the Free State province. The application was not opposed and there was no appearance for or on behalf of the respondent on the date of the hearing.
- [2] The grounds on which the application was based are three-fold: first, the respondent's delay of a matter in which the respondent acted for one BS Mogale and his failure to keep BS Mogale abreast of the developments in the matter, failure to follow instructions and failure to account to his client, the said BS Mogale; second, the allegations of unprofessional and unethical conduct by the respondent referred to the Law Society by the former Judge President of this division for investigation by the applicant against the respondent in a matter that served before him; and third, the embezzlement of an amount of R500 000-00 from the trust fund that was used for personal purposes without the knowledge of the partners in the firm he was involved with.
- [3] The first complaint was investigated by the Council of the applicant and the respondent provided proof of certain actions it wanted the respondent to do. At a stage, however, the respondent failed to submit further reports to the Council and also failed to respond to further enquiries made by the Council. He simply ignored the correspondence sent to him by the Executive Officer of the Law Society. As far as the second complaint was concerned, the respondent admitted he was not honest in dealing with the matter referred to but indicated he was the only person that suffered damages as a result. However, the Council later established that he was again not honest in that respect. In as far as the third complaint was concerned a criminal charge of theft was laid against the respondent. The respondent pleaded guilty in the magistrate's court to theft and was correctly convicted.
- [4] The enquiry by this court as to whether the respondent is a fit and proper person to continue practising as an attorney is a three- stage enquiry as set out in *Jasat v Natal Law Society*, 2000 (3) SA 44 SCA and consist of (a) whether the alleged offending conduct has been established on a preponderance of probabilities. The facts relating to the three complaints above all point to the dishonesty of the respondent on more than the preponderance of probabilities, (b) the second stage "involves a weighing up of the conduct complained of against the conduct expected of an attorney." See *Jasat* above. This is a value judgement the court must make, (c) the third stage is whether the conduct complained of warrants a

striking off or suspension with or without conditions. This is so because unprofessional, dishonourable or unworthy conduct may have different consequences: *Summerlev v Law Society, Northern Provinces*, 2006 (5) SA 613 (SCA)

[5] The admission to the profession as an attorney and the continued practise as such is premised on honesty - honesty to the client by disclosing the progress of a case entrusted to the attorney even if the facts are against a client, honesty to the Law Society by disclosing true facts before it and honesty to the court by doing everything necessary for the proper administration of justice with integrity worthy of the profession. Misappropriation of trust monies is a worse form of dishonesty which cannot be explained without severe sanction; *Law Society of the Free State v Mahlomola Goodwin Molapo*, Case No 1030/2013. Such misconduct does not only tarnish the trust the public has vis-a-vis the attorney concerned but cuts across the entire profession. The respondent has not explained to us what exceptional circumstances would have moved him to do what he did; *Law Society of the Free State v Molapo* (2013) ZAFSHC99. He almost defiantly kept the court in the dark why he would have acted the way he did. The prestigious status and dignity of the profession has been caused severe harm by the conduct of the respondent and thus his unfitness to practise as an attorney seems irresistible; *Malan & Another v Law Society of the Northern Provinces* 2009(1) SA 216(SCA). In the premises the Court cannot find otherwise than that the respondent is not fit and proper to continue practising as an attorney and that the ultimate sanction is warranted in the circumstances.

[6] Consequently the following orders are made:

6. 1 That the Respondent's name, Deon Jacques Gresse, be removed from the roll of attorneys.

6.2 That the Respondent surrenders and delivers to the Registrar of this court the Respondent's certificate of enrolment as an attorney of this court.

6.3 That should the Respondent fail to comply with paragraph 2 within 14 (fourteen) days of this order, the sheriff of the High Court for the relevant district be empowered and directed to take possession of such certificate and deliver it to the said Registrar.

6.4 The Respondent is hereby removed from office as:

6.4.1 Executor of any estate in respect of which he has been appointed in terms of Section 51(1)(a) (v) of the Administration of Estates Act, Act 66 of 1965 or the estate of any person referred to in Section 72(1); and

6.4.2 Curator or guardian of any minor or other person's property in terms

of Section 72(1), read with Section 54(1)(a)(v) and 85 of the Administration of Estates Act, Act 66 of 1965, or the estate of any

other person referred to in Section 72(1); and

6.4.3 Trustee of any insolvent estate in terms of Section 59 of the Insolvency Act, Act 24 of 1934; and

6.4.4 Liquidator of any company in terms of Section 379(2), read with Section 379(e) of the Companies Act, Act 61 of 1973; and

6.4.5 Trustees of any trusts in terms of Section 20(1) of the Trust Property Control Act, Act 57 of 1988; and

6.4.6 Liquidator of any Close Corporation appointed in terms of Section 74 of the Close Corporation Act, Act 69 of 1984.

[7] That the Respondent is ordered to pay the costs of this application.

K.J. MOLOI, J

I concur.

B.C. MOCUMIE, J

On behalf of the Appellant:

Mr. K Verwey

Instructed by:

Hill, McHardy & Herbst Inc.

BLOEMFONTEIN

On behalf of the Respondent: Adv. F. PIENAAR

Director of Public Prosecutions

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