

SOUTH AFRICA / JUDGMENT

# Law Society of Northern Provinces v Mashaba and Others (23258/2018) [2019] ZAGPPHC 123 (4 April 2019) [2019] ZAGPPHC 123

## COURT

North Gauteng High Court, Pretoria

## BEFORE

Janse van Nieuwenhuizen, S.A.M. Baqwa

## CASE / FILE NUMBER

23258/2018

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IN

THE HIGH COURT OF SOUTH AFRICA(GAUTENG DIVISION, PRETORIA)  
REPUBLIC OF SOUTH AFRICA

Case Number:

23258/2018

4/4/2019

DELETE

WHICHEVER IS NOT APPLICABLE

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

DATE:

.....

SIGNATURE:

.....

In

the matter between:       THE LAW  
                                  SOCIETY OF THE NORTHERN PROVINCES  
                                  Applicant  
                                  and  
                                  MAFANELA  
                                  PETRUS MASHABA  
                                  First  
                                  Respondent  
                                  MASHABA  
                                  (M) INCORPORATED ATTORNEYS  
                                  Second  
                                  Respondent

## JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] This is an application for the striking of the first respondent's name from the roll of attorneys on the basis that the first respondent's conduct fell foul of the conduct expected of a duly admitted and practicing attorney.

Parties

[2] The applicant, the Law Society of the Northern Provinces ("the Law Society"), has been succeeded by the Legal Practitioners

Council Gauteng, which council was established in terms of the provisions of the Legal Practice Act, 28 of 2014 ("the Act").

In terms of the provisions of section 116(2) of the Act, all proceedings instituted prior to the commencement of the Act, must be continued and concluded as if the Attorneys Act, 53 of 1979 has not been repealed by the Act.

[3] The first defendant is Mafanela Petrus Mashaba who was admitted as an attorney of this Court on 26 August 2004. The first respondent is currently practising as a single practitioner under the name and style of the second respondent, Mashaba (M) Incorporated Attorneys.

[4] The complaints in casu pertain to the period that the first respondent was practising as a partner at the firm Lindsay Keller Attorneys ("the Firm"). The first respondent resigned as a partner of the Firm on 16 July 2012.

[5] The application concerns only the first respondent and for ease of reference the first respondent will hereinafter be referred to as "the respondent".

## FACTS

[6] This application emanates from a complaint received by the Law Society on 23 August 2012 from the respondent's erstwhile Firm. The Firm accused the respondent of unprofessional and dishonest conduct.

[7] It appears that, whilst the respondent was a partner at the Firm, he acted as attorney of record for the Road Accident Fund ("the

Fund") in litigation emanating from the Fund's responsibility in terms of the Road Accident Fund Act, 56 of 1996.

[8] To this end the respondent regularly briefed counsel to represent the Fund in court proceedings. Upon the conclusion of the court

proceedings the relevant counsel submitted an invoice in respect of the work performed on behalf of the Fund.

[9] The Firm prepared attorney and client bills in respect of each matter, which bills reflected the amount invoiced by counsel in respect of a particular matter. Ms Mutch, the RAF practice manager at the Firm, stated in an affidavit attached to the complaint, that she was responsible to submit the attorney and client bills to the Fund.

[10] Ms Mutch's affidavit reveals the following:

*"4. I was quite surprised when, after submitting our bill in the Jankowitz matter, file number: RAF/R7665, for the amount of R101, 586.92, the RAF paid an amount of R109, 186.92 into our trust account on 20 February 2012 (a difference of R7, 600.00).*

5. It then emerged that an invoice for the amount of R7, 600.00 had been posted against this account in Winlaw, our accounting program.

6. At the time of me sending our bill to the RAF, no advocate's invoice was posted in Winlaw.

7. After receiving the aforesaid funds from the RAF, I obtained a copy of advocate Ngobeni's invoice from our accounts department.

8. According to our electronic file however, an advocate W Louw had been appointed, but at the date of me submitting our attorney & client bill to the RAF, no account had been received from this advocate.

9. Since we now had an invoice from an advocate Ngobeni, I was quite suspicious and took my findings to our Practice Manager, Mr M Mutch."

[11] Mr Mutch, the Firm's practice manager, deposed to an affidavit and explained which steps he took upon receipt of Ms Mutch's query:

*“3. Once N Mutch’s suspicions had been raised, I, myself, looked at advocate Ngobeni’s invoices that had been received in various matters and it appeared that the contact telephone number/s, physical addresses and e-mail addresses were inconsistent. Also, no invoice number ever appeared on any of the invoices.*

4. I then requested my accounts department to contact this advocate and request him/her to furnish us with amended invoices, reflecting invoice numbers.
5. Elsa, in accounts was however never able to contact him on any of the contact numbers reflected on the invoices.
6. Mr Mashaba, who had briefed Advocate Ngobeni, was then requested to request the advocate to contact us.
7. On 22 March 2012, Elsa received a call from the alleged advocate who advised that he is moving offices again and is also in the process of changing his service provider. It was agreed that no invoices would

be paid until we were in possession of amended invoices reflecting the correct contactable details.

8. On 25 March 2012, M Mashaba received an e-mail from the advocate, reflecting the advocate’s new e-mail address.
  9. At the beginning of July 2012, while I was doing routine filing in Mr Mashaba’s personnel file, I came across his Discovery Health application to add dependants form. From this I ascertained that his wife’s maiden name was Ngobeni and her first names are Reneilwe Dinah. I also noted her identity number on the Legal Provident nomination of beneficiary form.
  10. At this point, I suspected that Advocate R D Ngobeni, who was not listed in the 2012 edition of the Hortors, was Mr Mashaba’s wife.
  11. On my request, Elsa contacted FNB, gave them the bank account number which was reflected on the advocate’s invoices as well as the identity number of R D Ngobeni, as reflected on Mr Mashaba’s Legal Provident nomination of beneficiary form, 8104090126089.
  12. FNB confirmed that this account indeed belonged to an R D Ngobeni.”
- [12] Ms van Deventer, the “Elsa” referred to by Mr Mutch, deposed to an affidavit and confirmed Mr Mutch’s version.
- [13] The events that followed the above discovery, were revealed during a disciplinary meeting held by the Law Society on 27 February

2013. Mr Adams, as he then was, a partner of the Firm testified as follows:

*“EXAMINATION BY MS VAN ZYL: Mr Adams, what is your current position at the firm Lindsay Keller?”*

MR ADAMS: Mr Chairman, I am the managing partner of Lindsay Keller.

MS VAN ZYL: Now, Sir, was this incident being brought to your attention, how did you become aware of this matter?

MR ADAMS: Mr Chairman, during July of last year, I do not know the exact date, my senior partner, Mr Danie Weideman, convened an urgent meeting and he in fact asked me to attend the meeting with Malcolm Mutch, our practice manager. I was blissfully unaware of what the meeting was about. I went to his office, it was myself, Malcom Mutch and Danie Weideman at the meeting. Mr Mutch pointed out that certain irregularities and discrepancies had been brought to his attention, in particular that Advocate R.D. Ngobeni, who supposedly was an advocate being briefed by Mr Mashaba, who was a partner in the firm at the time, was non-existent. They had made enquiries to establish whether or not this counsel existed and in the end it was established that this counsel does not exist, Advocate R.D. Ngobeni. He has also made enquiries with the bank into which we had paid amounts in respect of invoices and it turned out that this account was in fact in the name of...the account number belonged to the wife of Mr Mashaba. So that is how it came, how this whole thing came about.

MS VAN ZYL: And did you confront Mr Mashaba with this evidence?

MR ADAMS: Immediately after we had the full picture as explained to us by the office manager, we then resolved there and then that this is something that we should not leave for much longer. Mr Mafa Mashaba was in the office a few doors down from Mr Weideman's office. Danie Weideman called Mr Mashaba and he asked him to immediately come to his office. Mr Mashaba then came into the office and we confronted...in fact, Mr Weideman confronted him in my presence with these allegations and for a few minutes there was a stunned silence and Danie said to Mafa, what do you say about this and he was quiet for a few minutes and after a few minutes he said, look, words to the effect that I admit that I did it. Mr Weideman then asked him, you know, why did you do this, this is so unlike you, how can you do something like this and his response, not in any particular order was as follows:

Ø that he did it because a lot of other people are doing it; and secondly,

Ø he was aggrieved by the fact that despite the good work that we do for the Road Accident Fund, they do not appreciate the good work that we did

and this was his way, I suppose of punishing them for being their clients. Ja, but there was no doubt that he admitted that he had committed these irregularities. We then said to him, look, in the circumstances we have every intention of taking disciplinary action against you, but we will give you the option, in fairness to you, to just resign from the firm and to save face. That he did. On the same day he submitted, I think it was on the same day, on 16 July 2012, he submitted his official resignation letter dated 16 July, addressed to the partners, Lindsay Keller in Rosebank and it says:

‘Dear Sir, Madam

## RESIGNATION

Be advised that I forthwith tender my resignation letter with immediate effect.

Kind regards

Yours faithfully

(Sgd) MAFANELA MASHABA'

and we accepted that resignation."

[14] It, furthermore, emanated from Mr Adam's testimony that the Firm refunded the Fund in an amount of R 134 000, 00 which amount represented the fraudulent claims. The R 134 000, 00 was deducted from bonuses still owing to the respondent upon his resignation. A further amount of R 140 000, 00 that was still due to "advocate" Ngobeni was reversed in the accounting system.

[15] The respondent, during cross-examination of Mr Adams, denied that he admitted any wrongdoing. According to the respondent the only

admission he made is that he had briefed his wife. Mr Adams denied this and stated that the respondent's wife is in any event not an advocate.

[16] Mr Mashaba stated that she was. When asked by Mr Erasmus, the chair of the committee, at which Bar "advocate" Ngobeni was practising, the respondent answered as follows: "I do not...I know that she is in the Johannesburg Bar, with the independent Bar".

[17] When asked whether he had proof of his wife's admission, the respondent deflected the answer and insisted that he only admitted to having briefed his wife, "advocate" Ngobeni.

[18] Mr Adam's response to the aforesaid statement by the respondent is telling:

*"Mr Chairman, I am quite happy to answer the question and I will answer it like this: This is news to me, Mr Mashaba was my partner for, I think it was three, four years. I do not know that his wife is an advocate, I have...that was never...this is the first time ever that I hear that his wife is an advocate, but in addition to that, this is not what he said at the meeting. He accepted that it was a fictitious counsel that had been created, payments were made to a fictitious counsel, there was no that the work had never been done by this counsel and we at the time thought that.....because his wife's maiden name apparently is Ngobeni, but the whole thing was a fraud, there was no work done by counsel, be it his wife or any other counsel. He accepted that as a fact that he had defrauded, or defrauded the firm and/or the Road Accident Fund from these payments that we have made, but I have to emphasize, this is the first time that I hear that Mr Mashaba's wife is an advocate and I do not accept that for one minute."*

[19] The respondent, once again, endeavoured to diminish the import of his admission by stating that he never admitted to "having defrauded anyone or stealing anything".

[20] Mr Adams responded as follows to the respondent's assertion that he never admitted any wrongdoing:

*“But what you have admitted is that R 134 000, 00 was inappropriately misappropriated and hence the agreement that we will set off whatever was due to you.”*

- [21] Significantly, the respondent did not deny the reasons he proffered for his conduct at the meeting with his partners.
- [22] The respondent’s version in his answering affidavit pertaining to the question whether he knew, at the time of briefing his wife, whether she was an admitted advocate or not, differed substantial from the evidence he presented at the disciplinary inquiry. In fact, the respondent gave two contradictory versions. Save to note that these contradictions, is a further cause for concern, it does not really advance the inquiry into the respondent’s conduct much further.
- [23] The admission by the respondent pertains to fictitious invoices submitted to the Fund in respect of work that was not done. In whose name the respondent chose to issue these invoices is inconsequential.
- [24] The respondent’s only defence to the allegations against him, is that Mr Adams did not tell the truth.
- [25] If the respondent’s version of what transpired during the meeting with his partners is correct, it defies all logic that he, on his own version, immediately tendered his resignation. According to the respondent, he did nothing untoward.
- [26] The respondent, furthermore, admits that R 134 000, 00 was deducted from monies due to him by the Firm and that the said amount was paid to the Fund. Why would a seasoned and honest attorney forfeit R 134 000, 00, if the amount represented fees for work that was actually done.
- [27] A further problem the respondent faces is the fact that the invoices submitted by “advocate” Ngobeni were produced on his computer.
- [27] The respondent’s explanation in respect of the invoices on his computer is rather curious. According to the respondent, he always had all the invoices of counsel that he regularly briefed on his computer. The reason being that he needed to change the invoices in the event that the Fund paid a lesser amount than the amount reflected on the invoice.
- [28] Save to state that it is highly irregular to change an account that was already submitted to the Fund, the respondent’s version does not account for the fact that only his wife’s invoices appeared on his computer.
- [29] The respondent’s version of events is highly improbable and I have no hesitation to reject his version out of hand.
- [30] In the result, I am satisfied that the fraudulent conduct of the respondent has been established on a balance of probabilities.

[31] I pause to mention, that the Law Society referred to a further complaint received from the Sheriff of Johannesburg in respect of an over payment it made to the respondent. It appears that the complaint is the subject matter of litigation and I do not deem it necessary to refer thereto in these proceedings.

## LEGAL REQUIREMENTS

[32] It is trite that an inquiry into the fitness of an attorney to remain on the roll of attorneys envisage three stages.

### Factual inquiry

[33] The first stage involves a factual inquiry to establish whether the offending conduct had been established on a balance of probabilities. I have already found that it did. [Jasat v Natal Law Society 2000

(3) SA 44 SCA]

### Fit and proper

[34] Secondly, the court should inquire whether the offending conduct disqualifies the practitioner concerned to continue practicing, in other words is the practitioner still a fit and proper person to practise as an attorney.

[33] This stage of the inquiry involves a value judgment, which in turn involves the weighing up of the fraudulent conduct of the respondent

against the conduct expected of an attorney.

[34] The conduct expected of an attorney was succinctly summarised by Eksteen JA in Vassen v Law Society of the Cape of Good Hope [1998] ZASCA 47; 1998

(4) SA 532 (SCA) at page 537F-G of the judgment:

*“In this regard it must be borne in mind that the profession of an attorney, as of any other officer of the Court, is an honourable*

profession which demands complete honesty, reliability and integrity from its members; and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly. When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that for which it is being held, and that it will be available to be paid to the persons on whose behalf it is held whenever it is required. Here once again the respondent Society has been created to ensure that the reputation of this honourable profession is upheld by all its members so that all members of the public may continue to have every confidence and trust in the profession as a whole.”

[35] The respondent's fraudulent conduct does not only fall dismally short of the high standard of conduct expected of an attorney, it also amounts to criminal conduct.

[36] The respondent is clearly no longer a fit and proper person to continue as an attorney of this court.

#### Sanction

[37] Having found that the respondent is no longer a fit and proper person to practice as an attorney, the third stage of the inquiry requires the court to consider an appropriate sanction.

[37] Mr Groome, the legal practitioner on behalf of the Law Society, submitted in his heads of argument that the court in considering an appropriate sanction, is not first and foremost imposing a penalty, the main consideration should be the protection of the public.

[38] The public, no doubt, should be protected from engaging the services of an unscrupulous attorney. The respondent's dishonest conduct reflects on his personal integrity and poses a serious threat to his engagement with his clients, his colleagues and more importantly, the court.

[39] More disconcerting, is the fact that the respondent did not hesitate to discredit his erstwhile partner, Mr Adams, who is presently a judge of this division, during the disciplinary inquiry.

[40] The respondent, after initially admitting wrongdoing, did a direct turnabout and employed every conceivable tactic to escape the

consequences of his conduct. In so doing he had no hesitation in being dishonest and deceitful. This is not conduct befitting an

officer of court and an order confirming the aforesaid should follow.

#### ORDER

[41] In the premises, I propose the following order:

1. That Mafanela Petrus Mashaba (the First Respondent) be struck from the roll of attorneys of this Honourable Court.
2. That the First Respondent immediately surrenders and delivers to the Registrar of this Honourable Court his certificate of enrolment as an attorney and conveyancer of this Honourable Court.
3. That in the event of the First Respondent failing to comply with the terms of this order detailed in the paragraph 2 hereof within two (2) weeks from the date of this order, the sheriff of the district in which the certificates are, be authorised and directed to take possession of the certificates and to hand it to the Registrar of

this Honourable Court.

4. That the First Respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof.
5. That Johan van Staden, the head : members of applicant or any person nominated by him, in his capacity as such, remains a suitable person to act as curator bonis (curator) to administer and control the trust accounts of the First Respondent, including accounts relating to insolvent and deceased

estates and any deceased estate and any estate under curatorship connected with the first Respondent's practice as an attorney

and including, also, the separate banking accounts opened and kept by the first respondent at a bank in the Republic of South Africa in terms of section 78(1) of the Attorneys Act, 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78(2A) of the Attorneys Act, 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with following powers and duties:

5.1 immediately to take possession of the First Respondent's accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the First Respondent was acting at the date of this order;

5.2 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 trust accounts, to cover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the First Respondent in respect of monies held, received and/or invested by the First Respondent in terms of section 78(1) and/or section 78(2) and/or section 78(2A) of the Attorneys Act, 53 of 1979 (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 was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account (s);

5.3 to ascertain from First Respondent's accounting records the names of all persons on whose account the First Respondent appears to hold or to have received trust monies (hereafter referred to as trust creditors); to call upon the First Respondent 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 names, addresses and amounts due to all trust creditors;

5.4 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 the trust account(s) of the First Respondent and, if so, the amount of such claim;

5.5 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;

5.6 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;

5.7 in the event of there being any surplus in the trust account(s) of the First Respondent 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 78(3) of the Attorneys Act, 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the First Respondent, the costs, fees and

expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by the First

Respondent to the 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, if he is solvent, or, if the First Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of the First Respondent, 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 trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Attorneys Fidelity Fund;

5.9 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

5.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of the First Respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That the First Respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:

6.1 any monies received, held or paid by the First Respondent for or on account of any person while practising as an attorney;

6.2 any monies invested by the First Respondent in terms of section 78(2) and/or section 78(2A) of the Attorneys Act, 53 of 1979;

6.3 any interest on monies so invested which was paid over or credited to the First Respondent;

6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the First Respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

6.5 any insolvent estate administered by the First Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, 24 of 1936;

6.6 any trust administered by the First Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, 57 of 1988;

6.7 any company liquidated in terms of the Companies Act, 61 of 1973, administered by the First Respondent as or on behalf of the liquidator;

6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the First Respondent as or on behalf of the liquidator, and

6.9 the First Respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the First Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

7. That should the First Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the First Respondent (as the case may be), 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.

8. The curator shall be entitled to:

8.1 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;

8.2 require from the persons referred to in paragraph 8.1 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;

8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 wind-up of the First Respondent's practice.

9. That the First Respondent be and is hereby removed from office as –

9.1 executor of any estate of which the First Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, 66 of 1965 or the estate of any other person referred to in section 72(1);

3.81cm; text-indent: -1.48cm; margin-top: 0.25cm; margin-bottom: 0cm"> 9.2 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 section 85 of the Administration Estates Act, 66 of 1965;

9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, 24 of 1936;

9.4 liquidator of any company in terms of section 379(2) read with section 379(e) of the Companies Act, 61 of 1973;

9.5 trustee or any trust in terms of section 20(1) of the Trust Property Control Act, 57 of 1988;

9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, 69 of 1984; and;

9.7 administrator appointed in terms of section 74 of the Magistrates' Courts Act, 32 of 1944.

10. That the First Respondent be and is hereby directed:

10.1 to pay, in terms of section 78(5) of the Attorneys Act, 53 of 1979, the reasonable costs of the inspection of the accounting records of the First Respondent;

10.2 to pay the reasonable fees of the auditor engaged by the Applicant;

10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

10.5 to pay the expenses relating to the publication of this order or an abbreviated versions thereof; and

10.6 to pay the costs of this application on an attorney and client scale.

11. That if there are any trust funds available the First Respondent shall within six (6) 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 fees and disbursements due to him (the First Respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof.
12. 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.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

S.A.M. BAQWA

DATE HEARD

12 February 2019

**JUDGMENT**

DELIVERED 4 April 2019

**APPEARANCES**

Counsel for the Applicant:

Mr. L Groome

(012 452 4024)

Instructed by:

Rooth & Wessels Inc

(012 452 4000)

Ref: A BLOEM/rd/MAT31650

Counsel for the Respondent:

Mr K.M. Röntgen (Senior)

(083 391 6666/012 481 3638)

Instructed by:

Röntgen & Röntgen

(012 481 3555)

Ref: KM Röntgen Sr/Nela/R10056/MAS43/1)

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