

SOUTH AFRICA / JUDGMENT

Law Society of the Northern Provinces v Mnisi (15439/14) [2014] ZAGPPHC 692 (9 September 2014) [2014] ZAGPPHC 692

COURT

North Gauteng High Court, Pretoria

BEFORE

P.M. Mabuse, D.S. Fourie

CASE / FILE NUMBER

15439/14

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 15439/14

DATE: 9 SEPTEMBER 2014

THE LAW SOCIETY OF THE NORTHERN PROVINCES.....APPLICANT

(Incorporated as the Law Society of the Transvaal)

V

JUDAS SWABI

MNISI.....RESPONDENT

JUDGMENT

MABUSE J:

- [1] By a notice of motion issued by the registrar of this Court on 21 February 2014 the Applicant, a statutory body of Attorneys constituted as such in terms of the provision of s. 56 of the Attorneys Act No. 53 of 1979 (“the Act”), seeks an order, among others, in terms of which the name of the Respondent is removed, in terms of s 22(d) of the Act, from the roll of practitioners. The Respondent opposes the application and has for that purpose delivered his answering affidavit.

- [2] The Respondent, Mr. Judas Swabi Mnisi, was admitted as an attorney by this Court on 9 March 2009. After his admission as such he commenced to practise for his own account under the aegis of Swabi Attorneys at 15 Maphutha Ditshaba Building in Burgersfort with effect from 18 March 2009. In his answering affidavit, he pointed out that the aforementioned address was his former address and that his current address was Office 14, Ground Floor, BBS Building, Burgersfort. Although the Respondent's name is still on the roll of practitioners, he has, however, been suspended from practice by order of this Court granted in favour of the Applicant on 18 March 2014. The said order constitutes part of this application.
- [3] In this application the Applicant has, through its president, Llewelyn Gray Lewis, who was so duly authorised by a resolution of its council taken on 31 January 2014, set forth the facts on the basis of which it seeks the order referred to above.
- [4] There are basically four grounds on the basis of which the Applicant seeks the relief set out above. Those grounds are firstly that the Respondent practised without being in possession of a Fidelity Fund Certificate ("FFC"); secondly that there is a very serious financial complaint by a member of the public against the respondent; thirdly that a report compiled by Ms. Phosina Mapfumo ("Mapfumo") has found that the Respondent has contravened numerous provisions of the Act and its regulations; fourthly that there was a serious shortage in his trust bank account.

[5] FIDELITY FUND CERTIFICATE

Section 41(1) of the Act prohibits an attorney from conducting his practice without being in possession of a Fidelity Fund Certificate duly issued to him by the Applicant. It provides that:

"A practitioner shall not practise or act as a practitioner on his own account or in partnership unless he is in possession of a Fidelity Fund Certificate."

The Respondent has admitted that he did not have the said certificate but contended that he had applied for one to the Applicant and that the Applicant had delayed in issuing it to him. On the other hand the Applicant contended that it could not issue the Respondent with such a certificate while there was still a crucial issue outstanding. That issue concerned a complaint by a former client of the Respondent. It is crucial to note the fact that the Respondent practised without the Fidelity Fund Certificate and

that he has admitted it.

- [6] The second ground on which the Applicant seeks the removal from the roll of the Respondent is the complaint from a certain Mrs. Mathabathe Albertina Mapalakanye ("the complainant"). On 30 July 2013 the Applicant received a complaint from the complainant against the Respondent's firm. The facts of the complaint were as follows. On 2 March 2010 her husband Maitje Machaka Johannes, was involved in a motor collision which resulted in his death. After his death, he approached a certain Thandi who was employed by some attorneys in Burgersfort to refer her to someone who could assist her to lodge a claim

against the Road Accident Fund in respect of the death of her husband. She was then introduced to the Respondent. During April 2010 she thereupon instructed the Respondent accordingly to process her claim.

- [7] The Respondent successfully processed the complainant's claim. The Road Accident Fund made an offer to settle the complainant's claim in the sum of R673, 845.00. The complainant accepted the said offer and the Road Accident Fund was duly notified about the such acceptance. The Road Accident Fund paid the said amount to the Respondent on 19 June 2012. After the Road Accident Fund had paid the said money to him the Respondent, firstly, failed to account to the complainant within a reasonable time; secondly he made her struggle before he could pay her sending her from one end to another for flimsy reasons; and thirdly, when eventually he paid her, the two cheques, one for R305, 383.75 and the other for R200,000.00 that the Respondent had drawn on his bank's

trust account for the total amount of R505,383.75, were dishonoured by the bank due to non-payment.

- [8] When he was confronted with the two dishonoured cheques by the Applicant, the Respondent failed to explain why the two were not paid. Instead of furnishing reasons to the Applicant why the bank dishonoured the two cheques he had given to the complainant, the Respondent mounted a vitriolic attack on the Respondent and challenged the validity of the claim that the complainant had lodged against him. The Respondent contended that the complaint laid by the complainant did not meet the minimum requirements provided for by the Applicant's Rules. He contended furthermore that a complaint that failed to comply with the mandatory rules was for all intents and purposes invalid. He conceded during the hearing of the matter that the complainant still has not been paid.

- [9] It is clear from the foregoing that, having received payment of the amount of R673, 845.75 on 19 June 2012, the Respondent:

9.1 failed, within a reasonable time, after performance of his mandate, to furnish the complainant with a written statement of account which set out with clarity:

9.1.1 details of the aforementioned amount;

9.1.2 particulars of disbursements and other payments made by him on behalf of the complainant;

9.1.3 fees and charges to or raised against the complainant;

9.1.4 the amount due to or owed to the complainant;

9.2 he contravened Rule 68.8 by failing to pay the complainant the amount due to her within a reasonable time;

9.3 without any lawful cause, he delayed the payment of the trust money to the complainant after such payment had been demanded from him and thereby contravened Rule 89.7;

9.4 he showed utter disrespect and contempt for the applicant;

9.5 he unnecessarily made the complainant to struggle and sent her from pillar to post before he could pay her; and,

9.6 he still has not paid the complainant and has made no arrangements to do so in the future.

[10] In response to the Applicant's contention as set out above, the Respondent contends that he has never been charged by the Applicant and that it is very opportunistic and dishonest for the Applicant to contend that he contravened any rule of the Applicant. He continued in his tirade against the Applicant and stated that:

"Clutching at straws, the applicant throws Rule 89.1 which the complainant herself in her statement confirmed having been referred to me. This is opportunism at its best and i view it as bordering on anti-African (black) crusade because the complainant, as per her statement preferred a white attorney until a black fellow referred her to me, the other African (black) fellow"

In his response the Respondent completely avoided dealing with the issue that related to the two dishonoured cheques. He literally was unable to explain anything about the two cheques.

[11] The third ground on the basis of which the Applicant sought the ultimate relief against the Respondent was that, notwithstanding his verbal undertaking to do so, the Respondent failed to furnish Mapfumo, the Applicant's auditor, with his accounting records for the periods 2011, 2012, 2013 and the current period.

[12] Ms Mapfumo tried unsuccessfully several times to contact the Respondent for the purpose of making arrangements for their meeting. The Respondent failed to answer, and to return, her calls. Without having made arrangements with him, Mapfumo visited the Respondent's offices on 19 September 2013, only to find them closed. She learned that the Respondent had moved offices.

[13] She arranged a meeting with the Respondent after she was able to obtain his alternative contact number. When they met, he and Mapfumo were unable to get in his office due to the fact that he told her that his offices had been locked by his landlord due to non-payment of rental. Mapfumo was able to obtain access to his office after making arrangements with the landlord. Once access had been gained, the Respondent told her that his accounting records were with his bookkeeper in Pretoria. He promised that he would fetch them and take them to Mapfumo. That was on 3 October 2013. He still has not fulfilled his promise up to date of hearing despite his undertaking.

[14] The respondent's response to the report by Mapfumo is captured in the following statement by the Respondent:

" 3.5 Safe to admit that Ms. Mapfumo came to my office and explained being sent by the applicant and further allegations are news to me.

3.5.1 I need to record my disappointment, in the applicant for lacking honour and decency to hear and or require my attitude in a form of

representation on the report of Ms. Mapfumo and or cross-examining her on her findings that resulted in the applicant failing to adhere to the maxim audi alteram partem rule. ”

Quite clearly the Respondent does not dispute Ms. Mapfumo’s report or her evidence, firstly, that he did not return his calls; that he failed to answer his phone when she called him; that he has relocated his office without advising the Applicant within 30 days of such change of address and finally, he did not deny that he promised her that he would let her have his accounting records for the year 2011, 2012, 2013 and current year and that he still has not done so. In the premises the finding is inevitable that Ms. Mapfumo’s evidence is correct.

[15] Fourthly and finally the Applicant relied on the Respondent’s Rule 70 Audit Report for the period ending on 28 February 2013 for the relief it seeks against the Respondent. As required by the Applicant’s Rule 70, the Respondent filed his audit report for the period ending 28 February

2013. The said report reflected that the Respondent’s trust bank balance stood at R1478.97 as at 31 August 2012. As at 28 February 2013 the trust bank balance of the Respondent, according to the said report, stood at R1245.00. It is therefore clear that as at 31 August 2012 and 28 February 2013 there was a shortage of R673, 845.00 in the Respondent’s trust books and trust bank account. During the hearing of this matter the Respondent conceded that indeed his report showed the above mentioned balances. He was unable to indicate to us where the amount of R673, 845.00 had gone to.

[16] On the basis of the foregoing paragraph, the Applicant contends that:

16.1 by failing or neglecting to inform the Applicant about his change of address within 30 days of doing so the Respondent contravened Rule 3.1.

16.2 by failing to ensure that the total amount of money in his firm’s trust account, trust investment account, and trust cash was not less than the amount of the credit balances in the firm’s trust creditors the Respondent had violated Rule 78(1) of the Act read with Rule 61.3.1 of the Rules.

The Applicant views these contraventions in a very serious light. It is the fundamental duty of the Respondent as a duly admitted attorney to make sure that at all times the trust money he held on behalf of a client is kept safely. It was submitted by the legal representative of the Applicant that the Respondent’s contraventions of the provisions of the Act and Applicant’s Rules constituted unprofessional or dishonourable or unworthy conduct on the part of the Respondent as envisaged by Rule 89.11.

[17] It is important to point out that the fact that the Respondent practised without the Fidelity Fund Certificate was largely due to the applicant. The Applicant was reluctant, and in my view quite correctly so, to furnish the Respondent with a Fidelity Fund Certificate while a serious and crucial complaint against the Respondent remained unresolved. It was clear from this Rule 70 of the report that ended on 28 February 2013 that the Respondent had a serious trust shortage.

[18] The Respondent complained that the Applicant was in a rush to bring this application to Court without first subjecting him to disciplinary proceedings. This is confirmed by his statement regarding the complaint by the complainant where he stated that:

“... a complaint received by the applicant alone does not mean / am guilty of any offence, until an enquiry has been made and the guilty verdict passed. In the absence of a guilty verdict is a mere allegation without evidentiary value to can warrant this application. ”

The Respondent regarded the complaint by Ms. Mapalakanye as to a great extent hearsay evidence which he could not dignify with a response. Before the Court he was unable to point out any procedure that required the Applicant to subject him to disciplinary proceedings before it could haul him before the Court as it did. We are unanimous in our view that this application is properly before the Court.

[19] The discretion whether or not a person is fit and proper to be an attorney or to continue to practise as an attorney lies with the Court. The source of this principle is set out in s. 22(1) (d) of the Act which provides that:

“Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the Court within the jurisdiction of which he practises-

(d) if, he, in the discretion of the Court, is not a fit and proper person to continue as an attorney.
”

The Court exercises its discretion in terms of s. 22(1)(d) on the basis of the facts placed before it by the Applicant. Once the Court has decided that an attorney is not a fit and proper person to practise as an attorney, it must decide, in the exercise of such discretion, whether on the basis of all the facts before it the attorney should be removed from the roll or may be suspended. See *Jasat v Natal Law Society* 2000(3) SA 44 (SCA).

[20] Of the four grounds upon which the application is anchored, the complaint of Ms. Mapalakanye, the shortage of the amount of R673,845.00 and the complete absence of contrition on the part of the Respondent and his failure to realise the wrongfulness of his conduct are, in my view, the most serious ones. I have observed the remark that my brother Makgoba J made about the Respondent in the earlier application to suspend him. Makgoba J had this to say:

"I wish to remark that the respondent has struck me as an arrogant young man, arrogant towards his profession. Instead of explaining to the Court as to what happened to the missing monies, he goes all out to attack the integrity and establishment of the Law Society as a professional body. / must say that the Respondent does not seem to be taking his profession seriously. Even as / am looking at him and am seriously addressing the issue now, he is laughing at me. He does not seem to appreciate the seriousness of this matter."

[21] I now turn to an attorney's duties with regards to his client's trust account. Section 78(1) of the Act obliges an attorney to keep a separate trust banking account at a bank institution in the Republic of South Africa and to deposit therein all the monies held or received by him or her or any account. The attorney may not use such money for his own ends. In terms of

s. 78(2) of the Act no amount standing to the credit of any attorney's trust account shall be regarded as forming part of

his estate. Where he receives money on behalf of a client it is his duty to keep it in his trust account and to make it available to his client when it becomes payable. An attorney should not, without any reason, keep money he holds for a client for an inordinate period. It is also his duty that in paying out the monies he accounts properly to his client showing the amount that he received or the payments that he made on behalf of his clients and how he arrived at his fees.

[22] Section 83(14) of the Act provides that any practitioner who contravenes the provisions of the Act relating to his trust account shall be guilty of unprofessional conduct and be liable to be struck off the roll or suspended. The Respondent is, in my view, guilty of unprofessional conduct and on that ground alone he is liable to be struck from the roll of practitioners.

[23] It is the duty of an attorney always to make sure that at all material times he has available liquid funds in order to pay his creditors. An attorney should never, at any stage, allow a shortage in his trust account. The Rule 70 audit report that the Respondent submitted to the Applicant showed quite clearly that he had less funds than he was supposed to have in his trust bank account. He could not account in the said report of the missing money.

[24] The approach of the Court in relation to trust shortages and the duty of an attorney with regard to trust money were stated as follows in *The Law Society, Transvaal v Mathews* 1989(4) SA 389 T at page 394:

*"I deal now with the duty of an attorney in regard to trust money. Section 78(1) of the Attorneys Act obliges an attorney to maintain a separate trust account and to deposit therein money held or received by him on account of any person. Where trust money is paid to an attorney it is his duty to keep it in his possession and to use it for no other purpose than that of the client. It is inherent in such a trust that the attorney should at all times have available liquid funds in equivalent amount. The very essence of a trust is the absence of risk, it is imperative that trust money in the possession of an attorney should be available to his client the instant it becomes payable. Trust money is generally payable before and not after demand. See *Incorporate Law Society, Transvaal v Visser and Others*; *The Law Society of Transvaal v Viljoen* 1958(4) 5/1 115 T at 118 F-H. An attorney's duty in regard to the preservation of such funds is fundamental, positive and unqualified duty. Thus mere negligence nor wilfulness is an*

element of a breach of such duty: Incorporate Law Society Transvaal v Behrman 1977(1) SA 9042 at 905H. It is significant that in terms of section 83(13) of the Attorneys Act a practitioner who contravenes the provisions relating to his trust account and investment of trust money will be guilty of unprofessional conduct and be liable to be struck off the roll or suspended from practice. ”

[25] We are unanimous in our view that the Respondent cannot be regarded anymore as a fit and proper person to continue to practise as an attorney. In the circumstances it will only be proper for this Court to confirm his suspension and furthermore to order that his name be struck from the roll of attorneys. In the result I propose the following order:

1. An order incorporating the terms of the draft order hereto attached and marked “XYZ” is hereby granted.

P.M. MABUSE

JUDGE OF THE HIGH COURT

I agree,

D.S. FOURIE

Appearances

Counsel for the Applicant: SL Magardie

Instructed by: Damons Magardie Riechardson Attorneys

Attorneys for the Respondent: Swabi Mnisi Attorneys

Date Heard: 8 August 2014

Date of Judgment: 9 September 2014

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

Case number: 15439/2014

In the application of:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the
Transvaal).....Applicant

and

JUDAS SWABI

MNISI.....Respondent

ORDER OF COURT

Having read the papers filed of record and having heard the attorney for the Applicant,

IT IS ORDERED

1. That the name of JUDAS SWABI MNISI (hereinafter referred to as the respondent) be removed from the roll of attorneys of this Honourable Court.
2. That respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court.
3. That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.
4. That 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 affairs of applicant or any person nominated by him, be appointed as curator bonis (curator) to administer and control the trust accounts of respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78 (2A) of Act No. 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 the following powers and duties:

5.1 immediately to take possession of 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 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 under mentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against respondent in respect of monies held, received and/or invested by respondent in terms of section 78(1) and/or section 78(2) and/or section 78 (2A) of Act No 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 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 respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon 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 the 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 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 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 Act No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of 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 respondent 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 respondent, if he/she is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of 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 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 respondent immediately deliver his/her accounting records, records, files and documents containing particulars and information relating to:
 - 6.1 any monies received, held or paid by respondent for or on account of any person while practising as an attorney;
 - 6.2 any monies invested by respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;
 - 6.3 any interest on monies so invested which was paid over or credited to respondent;
 - 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5 any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 6.6 any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by 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 respondent as or on behalf of the liquidator;
 - 6.9 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, 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 respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him/her or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on 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. That 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 respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof.

9. That respondent be and is hereby removed from office as:

9.1 executor of any estate of which respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

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 of Estates Act, No 66 of 1965;

9.3 Trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;

9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984.

10. That respondent be and is hereby directed:

10.1 to pay, in terms of section 78(5) of Act No. 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;

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

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

11. That if there are any trust funds available the respondent 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 him/her (respondent) in respect of his/her former practice, and should he/she fail to do so, he/she shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he/she 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.

BY ORDER OF THE COURT

REGISTRAR

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Prepared on 14 October 2026 · Esheria