

SOUTH AFRICA / JUDGMENT

Law Society of the Northern Provinces v Msibi and Another (97815/2016) [2017] ZAGPPHC 1089 (19 October 2017) [2017] ZAGPPHC 1089

COURT

North Gauteng High Court, Pretoria

BEFORE

M MPHAGA, S POTTERILL

CASE / FILE NUMBER

97815/2016

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

(1)

NO REPORTABLE

(2)

NOT OF INTEREST TO OTHER JUDGES

(3)

REVISED

CASE NO. 97815/2016

19 October 2017

In

the matter between:

THE
LAW SOCIETY OF THE NORTHERN PROVINCES
Applicant
and
GAZI PAULOS
MSIBI
1st Respondent
GP MSIBI INC
ATTORNEYS
2nd Respondent

JUDGMENT

MPHAGA AJ:

- [1] On 7 February 2017, the applicant brought this application on an urgent basis seeking an order to suspend the first respondent as an attorney pending the finalization of the application for the striking of the first respondent's name from the roll of attorneys including ancillary relief as set out in Part A of the Notice of Motion. The aforesaid order as set out in Part A of the Notice of Motion was not opposed by both the first and second respondent and was accordingly granted on 7 February 2017.
- [2] The applicant enrolled this application to seek an order to strike the first respondent's name from the roll of attorneys, including the ancillary relief as set out in Part B of the Notice of Motion. The first and second respondents have not filed any notice of intention to oppose. The notice of set-down for this Part B of the hearing was properly served on the first and second respondents on 06 March 2017.
- [3] The first respondent was admitted and enrolled to practice as an attorney of this Court on 19 June 2006 and as a conveyancer on 12 December 2008 and his name still appears on the respective rolls of attorneys and conveyancers.
- [4] The first respondent is currently practicing as an attorney for his own account under the name and style of GP Mbisi Incorporated Attorneys at 1st Floor, Libertas Building, No 612 Voortrekker Street, Brakpan, Gauteng Province.
- [5] The applicant received complaints against the first respondent pertaining to inter alia misappropriation of trust funds, delayed payment of trust funds and failure to account from Rodel Financial Services, ("Rode!"), Mr TE Motshologi, ("Motshologi"), Mr MH Leshaba ("Leshaba") and Mr PP Mlotywa ("Mlotywa"). It is these complaints that triggered an investigation by the applicant, who appointed Mr Ashwin Reddy ("Reddy") a chartered accountant and auditor in the employ of the applicant to conduct such investigation.

REDDY'S SCOPE OF INVESTIGATION

- [6] Reddy attended at the first respondent's practice on 16 March 2016 and 7 June 2016 respective and was received by the first respondent. Reddy's instructions were to provide an overview of the first respondent's

accounting and supporting records, systems and procedures in order to establish the general state thereof and to identify and comment on any irregular and/or unsatisfactory aspects. He also had to determine the first respondent's firm's trust positions at specific and/or selected dates and reporting any trust deficits or similar irregularities to the applicant. Furthermore, Reddy had to identify

any other circumstances or irregularities which manifested during the course of the investigation and identify and report on any

contraventions by the first respondent of the provisions of the Attorneys Act, the Applicant's Rules.

OFFENCES COMMITTED BY THE FIRST RESPONDENT

[7] The offences that triggered the investigation by the applicant and the appointment of Reddy to conduct the investigation on its behalf were the following:

7.1 misappropriation of trust funds;

7.2 substantial trust deficit in the first respondent's bookkeeping;

7.3 there was a trust deficit in an amount of R2 749 620.01 on 29 February 2016 and a trust deficit in an amount of R2 409 961.22 on 30 April 2016 in the first respondent's bookkeeping;

7.4 the first respondent utilized trust funds to pay his personal and business expenses;

7.5 the first respondent received trust funds in his business account;

7.6 the first respondent utilized the trust funds of one trust creditor to pay another;

7.7 the first respondent received monies in respect of bridging finance in his business account, retained the monies and failed to pay them to the relevant applicants;

7.8 certain trust creditors' accounts reflected debit balances;

7.9 the first respondent failed to properly distinguish between trust and business account transactions;

7.10. the first respondent failed to keep proper accounting records in respect of his practice;

7.11 the first respondent contravened several provisions of the Attorneys Act and the Law Society's Rules relating to bookkeeping by attorneys;

7.12 the first respondent failed to debit fees correctly and posted all fees to a single trust creditor's account;

7.13 the identity of trust creditors were not reflected in the firm's accounting records;

7.14 the firm's accounting records cannot be relied upon;

7.15 the first respondent's Rule 70 auditor's report for the period ending 29 February 2016 was qualified;

7.16 the first respondent failed to account to clients;

7.17 the first respondent delayed the payment of trust funds;

7.18 the first respondent placed the Attorneys Fidelity Fund and his trust creditors at risk; and,

7.19 the complaints received from the aforesaid complainants by the applicant were serious.

SPECIFIC COMPLAINTS SUBMITTED TO THE APPLICANT

[8] The applicant received a complaint from Rodel, which provides bridging finance in property transactions. The first respondent submitted eight applications for bridging finance to Rodel in the total amount of

R919 000.00. Rodel caused a forensic investigation to be conducted in respect of these eight applications. The investigation opened the proverbial can of worms namely;

8.1 that the first respondent caused his business banking account details to be listed in the account details in the applications for bridging finance and not his trust banking account details;

8.2 that he first respondent alleged to have transferred the monies received in his business banking account to the respective applicants, but refused to provide proof thereof;

8.3 that two "applicants" denied that they had applied for bridging finance and that they received any payments from the first respondent;

8.4 that the addresses of certain of the "applicants" either did not exist or could not be found.

8.5 that the "applicants" interviewed during the investigation were unaware of the applications for bridging finance and did not receive any payments from the first respondent.

[9] During the aforesaid meetings with Reddy, the first respondent confirmed to

Reddy that he had received the monies in respect of the bridging finance into his business banking account. Upon being requested to provide Reddy with his office files relating to the transactions, the first respondent alleged that his files had been closed. An inspection of the firm's business account revealed that the funds from Rodel were not paid to the "applicants" for bridging finance, but were utilized towards the first respondent's personal and business expenses. The first respondent also made payments to other unrelated trust creditors. The receipt of trust funds into the first respondent's business banking account

constituted a contravention of section 78(1) of the Attorney's Act. By utilizing the trust funds of another trust creditor to pay another, the first respondent rolled trust funds.

[10] In his report, Reddy concludes that the first respondent transgressed the following of the applicant's Rules and provisions of the Attorney's Act:

10.1 Rule 68.5 (failure to update accounting records);

10.2 Rule 69.3 (failure to ensure that trust account of creditors are not in debt);

10.3 Rule 69.3.1 (the existence of a trust deficit in his bookkeeping)

10.4 Section 78(1) (failure to retain client's funds in his trust banking account)

10.5 Rule 68.1 read with section 78(4) (failure to keep proper accounting records).

[11] Motshologi's complaint was that he instructed the first respondent to attend to the transfer of his immovable property. The first respondent accounted for an amount of R100 000.00, but failed to account for the balance of the proceeds of R45 353.12. This failure by the first respondent to account to Motshologi constitutes a contravention of Rule 68.7.

[12] Leshaba's complaint was that he instructed the first respondent to attend to the registration of his

immovable property. The transaction delayed and Leshaba was sent from pillar to post by the first respondent, Leshaba later learned that the first respondent had applied for bridging finance in order to pay monies due to him. This failure by the first respondent to account to Leshaba constitutes a contravention of Rule 68.7 and Rule 68.8

[13] Mlotywa's complaint was that the first respondent attended to a property transaction on his behalf, but failed to account to him in respect of the proceeds of the transaction. Despite undertaking made by the first respondent to Mlotywa, the first respondent failed to honour such. The first respondent subsequently accounted to Mlotywa in the amounts of

R5000,00, but failed to account for the R185 000,00. This failure by the first respondent to account to Mlotywa constitutes a contravention of Rule 68.7 and 68.8.

ANALYSIS

AND FINDING

[14] In considering such an application the court must first decide whether the offending conduct

was established on a preponderance of probabilities and secondly whether, as stated in section 22(1)(d) of the Attorneys Act, the

first respondent in the discretion of the court is not a fit and proper person to continue to practise.

- [15] In this matter the offending conduct is not in dispute, thus the only questions to be answered are whether the first respondent is a fit and proper person to continue to practice as an attorney and conveyancer of this court and whether his name should be struck from the roll. Having regard to the conduct of the first respondent it is clear that he indeed made himself guilty of unprofessional, dishonourable or unworthy conduct.
- [16] It is required of any attorney to adhere to the specific requirements of the Attorneys Act and Rules pertaining to trust monies. This is so because trust money is money of the public which is placed under control and custody of an attorney. Lodging an auditor's report as required serves as a safety mechanism for the public and the client's money and is a prerequisite for an attorney to be issued with a fidelity fund certificate. In failing to do so the first respondent has not aspired to meet the standard of behavior which is required of an attorney. The first respondent has in fact committed acts which are tantamount to fraud against Rodel and has also failed to account to his clients in respect of trust funds and delayed and/or failed to make payment of such trust funds. In fact, the first respondent misappropriated the trust funds. The first respondent placed the attorney's Fidelity Fund at risk. The first respondent failed to render professional services of an adequate standard to the affairs of his clients. There is a substantial deficit in the first respondent's bookkeeping. Individually and cumulatively all these offences render the first respondent unfit to practice as an attorney and conveyancer-Malan v The Law Society of the Northern Provinces [2009] 1 All SA 133 (SCA).
- [17] I am satisfied that the first respondent is not a fit and proper person to continue to practice, his conduct cannot be excused and the first respondent's name is to be struck from the roll of attorneys and conveyancers-
- Jasat v Natal Law Society 2000 (3) SA 44 (SCA).
- [18] I am satisfied that the applicant has made out a proper case for the related prayers as set out in Part B of the notice of motion and in the circumstances the prayer for costs on an attorney and client scale is also warranted-Botha v Law Society of the Northern Provinces [2008] ZASCA 106; 2009 (1) SA 227 (SCA) at 23F-G.
- [19] I accordingly mark the draft order "X" and it is made an order of court.

M MPHAGA AJ

JUDGE OF THE HIGH COURT

I agree

S. POTTERILL

JUDGE OF THE HIGH COURT

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 97815/16

ON THIS 19th DAY OF OCTOBER 2017

BEFORE THE HONOURABLE JUSTICE POTTERILL

BEFORE THE HONOURABLE JUSTICE MPHAGA

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

GAZI PAULOS MSIBI

1st Respondent

GP MBISI INCORPORATED ATTORNEYS

2nd Respondent

DRAFT ORDER

Having heard counsel and having read the papers filed of record

IT IS ORDERED

1.1 that the name of GAZI PAULOS MSIBI (first respondent) is struck from the roll of attorneys.

1.2 The relief set out in paragraph 1.3 to 1.12 of the order of Court dated February 2017 remains in force.

2. That first respondent be and is hereby directed:

2.1 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 first respondent;

2.2 to pay the reasonable fees and expenses of the curator;

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

2.4 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

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

BY ORDER OF COURT

REGISTRAR

Ref: A Bloem/es/MAT29157

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Prepared on 13 October 2026 · Esheria