

SOUTH AFRICA / JUDGMENT

Legal Practice Council v Ahmed (11940/2023) [2023] ZAWCHC 290 (1 November 2023)

[2023] ZAWCHC 290**COURT**

Western Cape High Court, Cape Town

BEFORE

Meer

CASE / FILE NUMBER

11940/2023

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Source record**In the High Court of****South Africa****(Western****Cape Division, Cape Town)****CASE****NO: 11940/2023****In**

the matter between:

THE
LEGAL PRACTICE COUNCIL
Applicant
and
TASHRIQ
AHMED
Respondent
Date
of hearing: 19 October 2023
Date
of judgment: 1 November 2023
Before
the Honourable Ms Justice Meer

JUDGMENT

DELIVERED THIS 1ST DAY OF NOVEMBER 2023

MEER J

- [1] The Applicant applies on an urgent basis for the suspension of the Respondent from practicing as an attorney pending the finalization of a disciplinary hearing against him.
- [2] The Applicant, the Legal Practice Council, is a body corporate with full legal capacity which has jurisdiction over all legal practitioners and candidate legal practitioners in the Republic of South Africa. The application is brought in terms of section 43 of the Legal Practice Act 28 of 2014 (“the Act”), which section empowers the Applicant to bring urgent proceedings against a legal practitioner in circumstances where a disciplinary body is satisfied that the practitioner has misappropriated trust monies or is guilty of other serious misconduct, and informs the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner. The Applicant’s Investigation Committee upon being so satisfied has duly informed the Council thereof in respect of the Respondent, and these proceedings for his suspension were brought.
- [3] The Respondent is an attorney practicing for his own account under the name and style of Ahmed and Associates at 12th Floor, Norton Rose House, 8 Riebeeck Street Cape Town. The Applicant is 43 years of age and was admitted as an attorney by this Division of the High Court of South Africa on 10 May 2010.
- [4] The Applicant has received various complaints against the Respondent, the details of which appear below. On 28 March 2023 the Applicant’s Investigation Committee recommended that the complaints be referred for adjudication by a disciplinary committee and that the Applicant institute urgent legal proceedings to suspend the Respondent from practice, pending the outcome of a hearing before the Disciplinary Committee. It did so as aforementioned, on grounds that the investigating committee was satisfied that the respondent’s conduct amounted to serious misconduct.
- [5] Thereafter on 13 April 2023, the Applicant resolved to bring urgent proceedings to suspend the Respondent from practice, pending the outcome of a disciplinary hearing. I note my concern that some seven months have passed since the Applicant took the decision to hold a disciplinary enquiry, yet no such enquiry has commenced. This is an inordinately long delay, does not reflect well on the Applicant and is prejudicial to the Respondent.
- [6] The founding affidavit[1] of Meerushini Govender, an attorney, and elected member of the Western Cape Provincial Council of the South African Legal Practice Council, states that the decision to proceed with urgent relief against the Respondent is based on prima facie evidence that:

“6.1 The Respondent submitted fraudulent documents in support of his client’s applications to the Department of Home Affairs (“DHA”), and has done so on behalf of more than one client;

6.2 The Respondent has requested and receipted trust money from a trust creditor into a bank account which is not registered with the Applicant as the Respondent’s trust banking account, and which appears to be the Respondent’s personal banking account.

6.3 The Respondent, in response to learning that certain of his clients complained about his conduct to the Applicant, has directed threats to these complainants, including messages implying physical harm in the form of WhatsApp voice notes, which are included with this affidavit.

6.4 The Respondent provided a complainant with a forged letter, purportedly from the United Nations (“UN”), which supposedly granted the relevant complainant relocation to another country.

6.5 The Respondent, after failing to appear before the Applicant’s IC on two occasions, and in response to a complaint by one of his clients to the Applicant, demanded payment of R200 000, from her for supposed undue damages to [the Respondent’s] business”;

6.6 The Respondent failed to reply to the Applicant on five (5) distinct occasions, when he was directed to respond to complaints lodged with the Applicant;

6.7 The Respondent has failed to comply with the Rules and his own undertakings to repay clients’ trust money which were paid to him as a deposit by some of his clients.”

[7] The founding affidavit moreover states that the complaints by several members of the public against the Respondent and the investigation done by the Investigating Committee and the Applicant to date, demonstrate that the Respondent is guilty of serious misconduct since he has inter alia:

“7.1 Contravened the Code of Conduct for Legal Practitioners (the “Code”), which requires that an attorney shall respond timeously and fully to requests from the council for information

7.2 Failed to:

7.2.1 refrain from accepting trust money into a business banking account, as required by paragraph 54.11 of the South African Legal Practice Council Rules (the “Rules”)

7.2.2 promptly deposit trust monies into his trust banking account, as required by paragraph 54.14.7.2 and paragraph 54.14.7.13 of the Rules;

7.2.3 pay an amount due to a client within a reasonable period, as required by paragraph 54.13 of the Rules;

7.3 Engaged in conduct which brings the attorney’s profession into disrepute (paragraph 21 of the Code)

7.4 Failed to uphold the ethical standards generally recognized by the legal profession (paragraph 3.3.4 of the Code);

7.5 failed to maintain the highest standard of honesty and integrity (paragraph 3.1 of the Code)

7.6 Failed to honour any undertaking given by him in the course of his business or practice (paragraph 3.4 of the Code)”

[8] The Respondent denies that the various complaints constitute prima facie evidence of misconduct by him, complains that he was not afforded the opportunity to engage with the Investigation Committee prior to the launching of this application, and contends that based on an evaluation of his responses to each of their complaints the

risk of potential prejudice to members of the public by his continuing in practice is minimal, if non-existent, that a suspension

would be ruinous to him and he should accordingly not be suspended.

Complaints against the Respondent

Failure to deposit moneys into Trust Account: Complainants Mukendi, Aicha and Obi

[9] It is common cause that the Respondent failed to deposit into his trust account the following sums which he held on behalf of clients. Instead he deposited the funds into his personal account:

R10 000 received from Mr Mukendi as a deposit to bring an application to relocate him to another country;

R40 000 received from Ms Aicha for inter alia a permanent residence application

R30 000 received from Mr Obi for a work permit application

Whilst in his answering affidavit the Respondent sought to justify his conduct by stating that the moneys were not paid for his services as an attorney but for those of an entity Action Immigration of which he was sole director, in heads of argument on the Respondent's behalf, this was retracted. Mr Hodes very properly accepted that the failure to deposit the various sums of money into the Respondent's trust account was not permissible. He however contended that such failure was not sufficiently serious to warrant the Respondent's suspension from practice.

[10] By accepting Mr Mukendi's Ms Aicha's and Mr Obi's deposits into his private banking account, the Respondent transgressed the provisions of the Legal Practice Act, the South African Legal Practice Council Rules and Code of Conduct for Legal Practitioners. In this regard section 86(2) of the Legal Practice Act requires that all funds held on behalf of another person must be deposited into a trust account as soon as possible after receipt thereof, Rule 54.11 of the Rules requires that trust money shall in no circumstances be deposited in or credited to a business banking account and Rule 54.14.7.2 requires the prompt depositing of trust monies into a trust account.

[11] Furthermore, there is no evidence that the permission of the Legal Practitioners' Fidelity Fund Board to deposit trust money into an account contemplated in section 63(1)(g) of the Act was obtained. Finally Rule 54.14.13 requires that amounts received by a firm to cover a prospective liability for services rendered or to be rendered or for disbursements must be deposited forthwith to the credit of its trust banking account. There is, in short, a myriad of provisions of which the Respondent fell foul and he is thus guilty of misconduct.

Sending a forged United Nations document and Threatening Voice Notes to Client : Complaints by Mr Mukendi

[12] The above complaints arise from Mr Mukendi instructing the Respondent to bring an application for Mr Mukendi's relocation to another country. The common cause facts pertaining to Mr Mukendi are as follows:

12.1 The Respondent accepted an instruction from Mr Mukendi to bring an application to relocate him to another country;

12.2 The respondent accepted the amount of R10 000-00 as a deposit for his eventual agreed fee of R20 000-00. The Respondent, as aforementioned failed to deposit R10 000.00 into his trust account.

12.3 The Respondent did not seek Mr Mukendi's permission to engage the services of a third person to process his application. He nonetheless contends that he engaged a Mr Islam of Shiful Immigration to do so. Mr Mukendi's version that he has never heard of an entity named Shiful Immigration is undisputed.

[13] The Respondent's conduct in engaging a third party was a violation of paragraph 18.11 of the Code which only permits attorneys to make use of third parties with the consent of their client. The paragraph makes clear that engaging the services of a third party must be at the client's election and that the attorney is mandated to engage the third party at the client's cost. Paragraph 18.11 was clearly not complied with.

[14] The further common cause facts are as follows:

14.1 In early January 2023, the Respondent advised Mr Mukendi that his relocation application was successful and that he could choose to relocate to Norway, Sweden or Switzerland. This choice, according to the Respondent had been relayed to him by the aforementioned Mr Islam. Mr Mukendi chose Switzerland.

14.2 On 14 January 2023, the Respondent sent an email to Mr Mukendi which included a fraudulent/forged letter bearing a purported United Nations logo and purportedly from the United Nations stating that his relocation application had been granted. A mere glance of the fraudulent letter and the cursory manner in which the relocation of a refugee to Switzerland is dealt with, would raise questions about its authenticity, certainly so by an established Immigration lawyer, and probably even by the lay person. The wording too is of a questionable standard, and lacks the hallmark of professionalism one would expect from the United Nations.

In short it is an unimpressive document. The letter states:

“11/01/2023

Dear Sir

Re: Mukadi Colbys Mukend & Family Relocation Request-890120

We refer to above processes

The Relocation application has been granted

1. The Relocation is granted to said country
2. The Applicants bought own flight tickets
3. The applicants will be welcomed in terms of Switzerland refugee process
4. The Applicants give up South Africa Refugee Status
5. A travel Document will be granted
6. A representative of UN will collect at airport

Yours Faithfully

A.Muravha-Admin Officer”

14.3 On the basis of the undertakings in the fraudulent letter, the Respondent and his wife met with Mr Mukendi on 14 January 2023 and assured him that all was in order, that the United Nations was satisfied and would issue him with the necessary travel documents at the airport.

14.4 Mr Mukendi purchased plane tickets valued at about R40 000-00 for himself and his family and arrived at the airport on 15 January 2023 to leave for Switzerland. Contrary to the undertaking in the fraudulent letter, there was no United Nations representative to meet them and they had to deal with the harsh reality that they had been the victims of a fraud and could not relocate to Switzerland as assured by the Respondent.

14.5 Mr Mukendi lodged a complaint with the Applicant on 17 January 2023. The Respondent was notified of the complaint and asked to comment. He did not do so. The Applicant wrote to the United Nations enquiring about the authenticity of the letter given to Mr Mukendi by the Respondent. A reply from the UN confirmed that the letter was fraudulent. It stated moreover that there was no employee by the name of A Muravha, the person who signed the letter.

[15] In his answering affidavit, the Respondent stated that he did not create the fraudulent document but that it was delivered to him by Mr Islam of Shiful Immigration, his trusted Immigration consultant of many years, whom he had instructed apropos Mr Mukendi’s application. No supporting evidence was however provided to back up this averment. Mr Islam has certainly not attested to a supporting affidavit.

- [16] In reply, Ms Govender attempted to prove on analysing the fraudulent document, that it was created by the Respondent. She averred that the conclusion that the Respondent generated the document and then emailed it to Mr Mukendi is easily reached. The fake UN letter as received by Mr Mukendi from the Respondent, she stated, is not a scanned image of a hard copy document but an electronically generated PDF which contains interactive data such as a selectable United Nations logo, a selectable signature, a hyperlink to the email address Abdul@UN.org and the body of the letter can be interacted with by copying and pasting its contents by searching its contents for specific words. She averred that the document was created on 14 January 2023 at 07.57.23 and sent to Mr Mukendi shortly thereafter via electronic mail at 07.58 the same day. It was conceded by Mr Titus for the Applicant that as Ms Govender was not an expert this was inadmissible evidence, but forms part of the case that the Respondent would have to answer to at the Disciplinary Enquiry.
- [17] The Applicant contends that the Respondent is guilty of serious misconduct either for creating and submitting the fake UN letter, or for failing to verify its contents if he was not its author, for sending it to Mr Mukendi and thereafter assuring Mr Mukendi that “all was in order” after Mr Mukendi expressed concern about the alleged outcome of his relocation application.
- [18] I am inclined to agree with the Applicant that even if the Respondent’s version is acceptable, namely that he received a hard copy of the fake UN letter from Mr Islam scanned it and sent it to Mr Mukendi, the Respondent, as an attorney and an admitted specialist immigration lawyer failed to act with the necessary skill, care or attention reasonably expected from an attorney. This is especially so given my comments about the questionable authenticity of the letter at a cursory glance. On the Respondent’s own version he simply relied on the dictates by Mr Islam without interrogating the unimpressive letter or obtaining any assurance that the relocation application was indeed successful.
- [19] The facts and circumstances pertaining to the fraudulent letter chronicled above, in my view constitutes prima facie evidence of serious misconduct, as a consequence of which the extremely unfortunate events befalling Mr Mukendi, unfolded.
- [20] A further complaint by Mr Mukendi is that on 7 February 2023 , the day after Mr Mukendi’s complaints were sent to the Respondent for comment, the Respondent sent him threatening voice notes . A compact disc of the voice notes was handed in as evidence and the contents thereof were transcribed in the founding affidavit. The disc contains shocking, unprofessional, unacceptable and inexcusable utterings, and needless to say completely inappropriate for an attorney to inflict on a client.

- [21] The Respondent's response to the voice notes is a bare denial, a denial, which without more, does not unsettle the Applicant's prima facie evidence that the voice notes emanated from the Respondent and display serious misconduct. A voice recording of the Respondent's voice differing significantly from that on the compact disc, in response, might have unsettled the prima facie evidence.
- [22] The Respondent's answering affidavit portrays Mr Mukendi himself as an aggressive and threatening person and recounts an incident when Mr Mukendi belligerently demanded money from the Respondent after the complaints were lodged against the Respondent. Whilst that may be, it in no way exonerates the Respondent from the various acts of serious misconduct alluded to above.
- [23] The Respondent states that after the complaint by Mr Mukendi was lodged with the Applicant, he began repaying Mr Mukendi an amount of R65 000-00 (sixty five thousand Rand) in instalments and R25 000-00 (twenty five thousand Rand) has already been repaid from an FNB Bank account.

Failure to pay an amount due to a client within a reasonable period, as required by paragraph 54.13 of the Rules and paragraph 3.4 of the Code: Complainant Mr Obi

- [24] On 9 July 2021, Mr Obi paid the Respondent R40 000-00 (forty thousand Rand) which, in an act of misconduct, as aforementioned, the Respondent failed to pay into his trust account.
- [25] On 8 August 2022, the Respondent gave a written undertaking to repay Mr Obi's funds within ten days. He also communicated with him telephonically. Mr Obi's bank details appeared on the written undertaking. Despite Mr Obi directing a letter of demand through the Small Claims Court, the Respondent has still failed to repay Mr Obi his R40 000-00.
- [26] The Respondent's explanation for the non-payment, namely, that he had difficulty in communicating with Mr Obi and efforts would be made to obtain Mr Obi's current bank details whereafter he would be paid, simply did not pass muster, given that the written undertaking had Mr Obi's bank details. In argument the absence of a bank branch number was relied upon. No explanation is given as to why, if this were the problem, the Respondent simply did not phone Mr Obi and get his branch code. I note in passing that during argument it was debated, inconclusively, whether a branch code was even needed for a payment to be transferred into Mr Obi's account.
- [27] A further undertaking given at the hearing, to repay Mr Obi, this time, via the Applicant, does not detract from the fact that some fourteen months later Mr Obi's money, impermissibly deposited into an account other than the Respondent's trust account continues to remain unpaid, and this despite Mr Obi suing the Respondent in the Small Claims Court. The failure to deposit Mr Obi's funds into his trust account, together with his continued failure to repay the money after some 14 months qualifies as serious misconduct, misconduct that is contrary to paragraph 3.4 of the Code and 54.13 of the Rules

Failure to repay trust moneys within a reasonable time, contrary to Rule 54.13: Complainant Mr Babalana

- [28] On 22 May 2022 Mr Babalana paid the Respondent a deposit of R10 000-00 (ten thousand Rand) as legal fees for inter alia a citizenship application. On 9 July 2022, Mr Babalana terminated his mandate and the Respondent undertook to repay him by stating “Good day, I am no thief, you will be refunded . . . “As is contended by the Applicant whilst the language used by the Respondent lacks professionalism, the main issue is that the refund was only effected around eight months later on 22 March 2023 after a written complaint was made to the Applicant on 17 August 2022.
- [29] The Respondent failed to reply to the Applicant’s request for comment on 5 October 2022. Only on 9 February 2023, the Respondent replied ,stating that he had refunded the client and the matter was resolved. This was not so, as the final instalment of R5 000-00 (five thousand Rand) was only paid on 23 March 2023, approximately six weeks after the Respondent would have had the Applicant believe that matter was resolved.
- [30] As is pointed out in the replying affidavit, the Respondent failed to adhere to his own undertaking to repay the deposit which he made on 9 July 2022, which is contrary to paragraph 3.4 of the Code and failed to repay the client’s trust account monies within a reasonable period which is required by Rule 54.13. He also failed to respond to the Applicant timeously, contrary to Rule 16.2 of the Code, only replying four months later on 9 February 2023. I am of the view that in relation to Mr Babalana’s funds too there is prima facie evidence of misconduct.

Submission of fraudulent documents in support of a client’s application : Complainant Mr Umeh:

- [31] Mr Umeh instructed the Respondent to apply for a temporary residence permit.

It is common cause that the following fraudulent documents were submitted with Mr Umeh’s application for a temporary residence permit in June 2021:

31.1 An employment contract between Mr Umeh and an entity called Hentiq for whom Mr Umeh never worked, and which contract does not bear Mr Umeh’s signature:

31.2 Medical Certificates by a Dr Saayman in Bredasdorp whom, as is confirmed in affidavits by the Doctor and Mr Umeh, never examined Mr Umeh. Dr Saayman pointed out that the signature and stamp on the medical and radiological certificates are not his. Mr Umeh confirmed that he has never met the doctor who supposedly examined him on 4 and 5 March 2021.

31.3 Documents belonging to one of the Respondent’s other clients, a Mr Adonike;

31.4 Bank statements which did not belong to Mr Umeh.

- [32] In his answering affidavit, the Respondent avers that Mr Adonike’s document, were included in Mr Umeh’s application by Mr Umeh himself during his employment at the Respondent’s office, that Mr Umeh was responsible for submitting the fraudulent documents and that he,

the Respondent, had no knowledge of this. This response lacks credibility. It is common cause that Mr Umeh was employed by the Respondent in June 2022 whilst the fraudulent documents were submitted in June 2021 at which stage Mr Umeh would not have had access to Mr Adonike's documents. The Respondent attributes blame for the other fraudulent documents to the staff member who submitted Mr Umeh's application. The veracity of the Respondent's version must be tested at his disciplinary hearing.

- [33] It must be noted as contended by the Applicant, that the Respondent's attempt to impugn Mr Umeh's character by stating that he pocketed a payment of R44 500-00, by a client, holds no traction given that the Respondent conveniently omitted to inform the Court that Mr Umeh took the Respondent to the CCMA for an unfair dismissal and the parties reached a settlement in terms of which the Respondent paid Mr Umeh R15 000(fifteen thousand Rand).
- [34] The Respondent's argument that albeit the fraudulent documents emanated from his office, they did not emanate from him, he knows nothing about them, and he is accordingly not guilty of serious misconduct, is unsustainable. Paragraph 18.3 of the Code requires the Respondent to exercise proper control and supervision over his staff and office. On his own version the Respondent has failed to do so. This, in my view, constitutes serious misconduct.

Submission of documents : Complainant Ms Aicha

- [35] A further complaint by Ms Aicha is that the Respondent submitted documents on her behalf which were unknown to her and which she did not provide. These were a Critical Skills Certificate which she did not have at the time the application was submitted from an entity, "CCMG" and a cover letter for a waiver application in her name which she neither drafted nor signed, which references that certificate and falsely states, "I am a member of the CCMG for customer care." The Respondent's answering affidavit suggests that the application was handled by Action Immigration. This does not assist him, given his subsequent retraction that such entity was engaged as referred to in paragraph 8 above.
- [36] Ms Aicha alleged that when she raised the matter with him, the Respondent became aggressive and abused her verbally via WhatsApp messages and voice notes. The Respondent admits his rudeness but denies that he was "unduly aggressive or abusive".
- [37] The Respondent averred that he suffered professional and reputational damage and consequently claimed R200 000-00 (two hundred thousand Rand) from Ms Aicha. The basis for his claim appears to be that Ms Aicha informed the Applicant that the waiver letter was fraudulent which it was not.
- [38] The Respondent's behavior in relation to Ms Aicha too establishes prima facie evidence of misconduct.

Further allegations of prima facie misconduct

- [39] The Applicant avers further that contrary to paragraph 3.17 of the Code, the Respondent has changed the address of his practice without notifying the Applicant. It would appear that he has moved practice twice.
- [40] Whilst the Respondent asserts that he has not been found guilty of any misconduct by the Legal Practice Council or the Law Society, the Applicant avers this is dishonest, as the Respondent omitted to state that he was interdicted from practicing by this Court. This occurred after he failed to qualify for a fidelity fund certificate as a result of his failure to submit his 2013 Audit report. These instances prima facie constituted misconduct.
- [41] The standard to which an attorney is held has been restated recently in Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and others (459/22)[2023] ZASCA 112 (26 July 2023) at paragraph 4:

“Legal practitioners are obliged to conduct themselves with the utmost integrity and scrupulous honesty. Public confidence in the legal profession is enhanced by maintaining the highest ethical standards. A lack of trust in the legal profession goes hand in hand with the erosion of the rule of law. The Legal Practice Act 28 of 2014 (the LPA) replaced the Attorneys Act 53 of 1979 and came into operation on 1 November 2018. Like its predecessor, the objects of the LPA are, inter alia, to promote and protect the public interest and to enhance and maintain appropriate standards of professional and ethical conduct of all legal practitioners. As such the Limpopo LPC is not an ordinary litigant, but generally acts for the public good. Legal proceedings brought by the Limpopo LPC in this regard are sui generis and the disciplinary powers of the High Court over the legal practitioners are founded in its inherent jurisdiction as the ultimate custos morum of the legal profession.”

At paragraph 27 it was stated:

“ Abdication of responsibilities does not absolve legal practitioners of their duties.”

- [42] In South African Legal Practice Council v Steenkamp and others (6176/2022)[2023] ZAFSHC 368(26 September 2023), where a bookkeeper and professional assistant stole from trust accounts, it was held that the respondent attorneys had not conducted themselves in a manner that maintained strict standards of diligence required of them nor had they discharged the duty of care owed to their clients. There was accordingly a suspension from practice pending the finalization of an investigation. In similar vein in the instant matter the Respondent is not absolved from responsibility for forged and fraudulent documents emanating from his firm and as aforementioned, has acted in contravention of Paragraph 18.3 of the Code which requires him to exercise proper control and supervision over his staff and office.
- [43] These being interim proceedings, the Applicant is required to establish a prima facie right to a suspension of the respondent. The sending of forged/fraudulent documents to a client as in the case of Mr Mukendi, the submission of fraudulent documents, as with the applications of Mr Umeh and Ms Aicha, the failure to deposit moneys received from clients

into his trust account, the failure to repay moneys due to a client as with Mr Obi, all of which are common cause, establish a clear right. So too do some of the other transgressions referred to above. Prima facie the threats by the Respondent directed at some of the complainants have been established. Accordingly, at the very least, prima facie the Applicant has established that Respondent is guilty of serious misconduct and has contravened the Act, Code and Rules as averred in the Founding affidavit and referred to in paragraphs 5 and 6 above.

- [44] Mr Hodes took issue with the documents furnished by the Applicant in response to a Rule 35(12) notice by the Respondent. He noted in respect of a round robin agenda sent to Applicant's council members on April 2023, that Ms Govender was one of the members who approved the application in terms of section 43, that she had stated that she was one of the investigative committee members and there may be a conflict of interest and that no determination was made by the council as to whether there was a conflict, which there surely was. He noted further that the minute of the Investigation Committee's meeting of 28 March 2023 records that the Respondent threatened to kill Mr Umeh, an assertion totally without foundation which must have influenced the council greatly. Mr Hodes submitted that this application must be seen in the context of these documents. Mr Titus conceded that the assertion concerning Mr Umeh in the minutes was incorrect. I am of the view that the issues referred to in the agenda and minutes do not detract from the acts of serious misconduct on the part of the Respondent.
- [45] Prima facie the Respondent's conduct falls far short of the professional and ethical conduct and standards expected of an attorney as prescribed by the Act, Rules and Code. The fact that his clients are vulnerable and susceptible members of society exacerbates the seriousness of his conduct. I am inclined to agree that his misconduct is serious and demonstrates a risk to the public should he be permitted to practice pending the outcome of disciplinary proceedings.
- [46] The other requirements for the granting of an interim interdict are also present. There is a well-grounded apprehension of irreparable harm to the public if the interim relief is not granted and the Respondent continues practicing in the troubling manner displayed above. The several acts of serious misconduct, almost a pattern, do not reveal that the risk of potential prejudice to members of the public by his continuing in practice is minimal, if non-existent, as contended by the Respondent. An undertaking given at the hearing on his behalf to take no new work until the conclusion of the disciplinary hearing does not pass muster in the light of the prima facie repeated pattern of serious misconduct.
- [47] The Respondent avers that a suspension would be ruinous to him and he should accordingly not be suspended. Whilst I am mindful that a suspension has a serious impact, Respondent's averment that it would be ruinous to him is somewhat exaggerated. There is always scope for rehabilitation post suspension with the requisite mindset and resilience.

[48] The balance of convenience favours the applicant and the suspension of the Respondent, pending the finalization of the disciplinary enquiry, especially given the common cause facts and the clear right that has been established with regard to some of the complaints. There is no other adequate remedy available to the Applicant.

Appointment of a curator:

[49] Section 89, read with section 90(1)(c) of the Legal Practice Council Act provides for the appointment of a curator bonis by a court, on good cause shown and on application by the Council to control and administer, with any rights and powers and functions as a court may deem fit, a legal practitioner's trust account or trust account practice. I am of the view that the appointment of a curator bonis is warranted in the circumstances.

[50] In view of all of the above, the applicant is entitled to the relief it seeks. I am not satisfied that the circumstances of this case warrant an award of costs on the scale as between attorney and client which the Applicant claims.

[51] I grant the following order:

1. The Respondent, as an interim measure, is suspended from practicing as an attorney pending the finalization of a disciplinary hearing against the Respondent in terms of section 39 of the Legal Practice Act No. 28 of 2014 (the "LPA") including the finalisation of any relief the Applicant may bring in terms of section 40 of the LPA and any appeal in terms section 41 of the LPA (collectively referred to as the "Disciplinary Proceedings");
2. The disciplinary hearing in terms of section 39 of the LPA shall be instituted by 6 December 2023;
3. The Applicant is granted leave to bring an application, if any, to strike the Respondent from the roll of attorneys of this Court on the same papers, duly supplemented;
4. The Respondent is ordered to immediately surrender and deliver to the Registrar of this Court his certificate of enrolment as an attorney of this Court and any other Court he may be enrolled to practice in.
5. In the event of the Respondent failing to comply with the terms of this order detailed in paragraph 4 above, within ten (10) Court days from the date of this order, the Sheriff of the district in which the certificate was issued, is authorized and directed to take possession of the certificate and to hand it to the Registrar of this Court, alternatively, the Registrar of the Court where the certificate was issued.
6. The Respondent is interdicted and prohibited from handling or operating the trust accounts as detailed in paragraph 7 hereof.

7. The Director of the Western Cape office of the Applicant, presently Mrs Caron Jeaven, her successor in title and /or any person nominated by him/ her, shall be appointed as Curator Bonis (the “Curator”) to administer and control the trust accounts of the Respondent, including accounts relating to insolvent and deceased estates and any

deceased estate and any estate under curatorship connected with the Respondent’s practice, as a legal practitioner and including,

also, the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of section 86(1) &

- (2) of the LPA and/or any separate savings or interest-bearing accounts as contemplated in section 86(3) and/or section 86(4) of the LPA, 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 herein referred to as the “trust accounts”), with the following powers and duties:

7.1 immediately to take possession of the Respondent’s accounting records, records, files and documents and subject to the approval of the Legal Practitioners; Fidelity Fund Board of Control (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 Respondent was acting at the date of this order;

7.2 subject to the approval and control of the Fund, and where monies had been paid incorrectly and unlawfully from the undermentioned 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 the Respondent in respect of monies held, received and/or invested by the Respondent in terms of section 86(1) &(2) and/or section 86(3) and/or section 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 person in respect of incomplete transactions, if any, in which the 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);

7.3 to ascertain from the Respondent’s accounting records the names of all persons on whose account the Respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon the Respondent to furnish him/her, 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;

7.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require enabling him/her, acting in consultation with, and subject to the requirements of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account of the Respondent and, if so, the amount of such claim;

7.5 to admit or reject, in whole or in part, subject to the approval of the Fund the claims of any such trust creditor or creditors, without prejudice to such trust creditors' or creditors' right of access to the civil courts;

7.6 having determined the amounts which he/she considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the Fund;

7.7 in the event of there being any surplus in the trust account(s) of the Respondent after payment of the admitted claims of all trust creditors in full, to utilize 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 Respondent, the costs, fees and expenses referred to in paragraph 12 of this order, or such portion thereof as has not already been separately paid by the 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 Fund to the Respondent, if he is solvent, or if the Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

7.8 in the event of there being insufficient trust monies in the trust banking account(s) of the 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 Fund;

7.9 subject to the approval of the Chairperson of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of legal practitioners, counsel, accountants and/or any other persons, where considered necessary, to assist him/her in carrying out his/her duties as Curator, and

7.10 to render from time to time, as Curator, returns to the Fund showing how the trust account(s) of the Respondent has/have been dealt with, until such time as the Fund notifies him / her that he/she may regard his/her duties as Curator as terminated.

8. The Respondent shall immediately deliver to the Curator the accounting records, records, files and documents containing particulars and information relating to:

8.1 any monies received, held or paid by the Respondent for or on account of any person while practising as a legal practitioner;

8.2 any monies invested by the Respondent in terms of section 86(3) and/or section 86(4) of the LPA;

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

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

8.5 any insolvent estate administered by the Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No24 of 1936;

8.6 any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

8.7 any company liquidated in terms of the provisions of the Companies Act, No 61 of 1973 read together with the provisions of the Companies Act, No71 of 2008, administered by the Respondent as or on behalf of the liquidator;

8.8 any close corporation liquidated in terms of the Close Corporation Act, 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

8.9 the Respondent's practice as a legal practitioner of this Court, to the Curator appointed in terms of paragraph 7 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the Respondent shall be entitled to have reasonable access to them, but always subject to the supervision of such Curator or his/her nominee.

9. Should the Respondent fail to comply with the provisions of paragraph 8 of this order on service thereof upon him or after a return by the person entrusted with the service thereof that she/he has been unable to effect service thereof on the Respondent (as the case may be), the sheriff for the district in which such accounting records, records,

files and documents are, is empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such Curator.

10. The Curator shall be entitled to:

10.1 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 Respondent's practice;

10.2 require from the person referred to in paragraph 10.1 to provide any such documentation or information which she/he may consider relevant in respect of a claim or possible or anticipated claim, against her/him and/or the Respondent and/or the Respondent's clients and/or fund in respect of money and/or other property entrusted to the Respondent, provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof; and

10.3 publish this order or an abridged version thereof, in any newspaper she/he considers appropriate;

11. The Respondent is hereby removed from office as:

11.1 executor of any estate of which the Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No66 of 1965 or the estate of any other person referred to in section 72(1);

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11.2 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, No66 of 1965;

11.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No24 of 1936;

11.4 liquidator of any company in terms of section 379(2) read with 379(1) of the Companies Act, No61 of 1973 and read together with the provision of the Companies Act, No71 of 2008;

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

11.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act No 69 of 1984; and

11.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No32 of 1944.

12. The Respondent is hereby directed:

12.1 to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the Respondent;

12.2 to pay the reasonable fees of the auditors engaged by the Curator;

12.3 to pay the reasonable fees and expenses of the Curator, including travelling time,

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

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

12.6 to pay the costs of this application.

13. 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, 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 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.

14. A certificate issued by a director of the Fund shall constitute prima facie proof of the Curator's costs and the Registrar shall be authorized to issue a writ of execution on the strength of such certificates to collect the Curator's costs.
15. Any person whose rights are affected by the terms of this order shall be entitled on notice to the Applicant and Respondent, to make an application to this Court for a variation of this order on good cause shown.
16. A copy of this Order shall be served on the Master of the High Court.

MEER, J

Attorney for Applicant: M Titus Instructed by Marais Muller Hendricks Inc. Advocate for
Respondent: P Hodes SC S Banderker Instructed by Ahmed and Associates

[1]At Paragraphs 10.1 to 10.7

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Prepared on 8 October 2026 · Esheria