

SOUTH AFRICA / JUDGMENT

Naude and Another v South African Legal Practice Council (A262/2023) [2025] ZAGPPHC 774 (12 August 2025) [2025] ZAGPPHC 774

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar, Van der Schyff, Labuschagne

CASE / FILE NUMBER

A262/2023

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Source record

FLYNOTES:

PROFESSION – Suspension – Misrepresentation – Adequacy of investigation – Auditor's report was a superficial desktop evaluation – Alleged trust account breaches were either minor, explained, or later rectified – Failed to afford attorney a proper hearing before recommending suspension – Proceeded on an urgent basis without sufficient justification – No substantive basis for suspension – Allegations of misrepresentation were unfounded – Failed to conduct a thorough investigation – Appeal upheld.

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

Case

No. A262/2023

(1) REPORTABLE:

YES/NO

(2) OF INTEREST TO

OTHER JUDGES: YES/NO

(3) REVISED

DATE: 12 AUGUST 2025

SIGNATURE:

In

the matter between: NAUDE,
WYNAND
FIRST
APPELLANT
NAUDE
(WYNAND) INC. ATTORNEYS
SECOND
APPELLANT
And
SOUTH AFRICAN LEGAL
PRACTICE COUNCIL
RESPONDENT

Coram: Van
der Schyff J et Millar & Labuschagne JJ
Heard

on: 21
May 2025

Delivered: 12
August 2025 - This judgment was handed down electronically by
circulation to the parties' representatives by email,
by being
uploaded to the CaseLines system of the GD and
by release to SAFLII. The date and time for hand-down is deemed
to be 10H00 on 12 August
2025.
ORDER
It

is Ordered: [1]
The appeal is upheld with costs on the scale as between attorney
and own
client.
[2]
The order of the Court a quo is set aside and replaced with

the following: “The
application is dismissed with costs on the scale as between
attorney and own client.”

JUDGMENT

MILLAR J (Van der Schyff and Labuschagne JJ concurring)

- [1] Honesty, integrity, hard work and dedication form the bedrock required to establish a good name and professional reputation. Once attained, this is to be jealously guarded by both the practitioner as well as the professional body under whose aegis he conducts his practice.

- [2] This is an appeal which lies against an order granted on 22 February 2023 on an urgent basis in terms of which the first appellant (Mr. Naude) was suspended from his 37-year practice as an attorney pending the finalization of the South African Legal Practice Council's (LPC) application to strike his name from the roll of legal practitioners.
- [3] This appeal, which is with the leave of the Supreme Court of Appeal[1] raises 3 issues for consideration. The first is the conduct of Mr. Naude which was said to justify the bringing of the application, the second, the circumstances under which the application for suspension was brought and the conduct of the LPC in doing so and lastly, costs.
- [4] Before dealing with each of these in turn, it is necessary to set out the circumstances which brought Mr. Naude to the attention of the LPC.
- [5] There were two complaints made against him. The first was in regard to certain letters authored by him on behalf of his client/s and the second in regard to what was said to be his failure to comply with professional rules of practice.

COMPLAINT LODGED BY OPES PROPERTIES

- [6] A complaint was lodged against the Mr. Naude arising from his representation of Mr. Asfar, a Canadian who had decided to conduct business within the Republic. For this purpose, over the period 2015 to 2016, Mr. Asfar had caused R120 million to be transferred into the trust account of Mr. Naude's firm. He then registered two companies through which he would conduct his business.

These were Equity Cheque Capital Corporation (Pty) Ltd and Equity Cheque Card Corporation (Pty) Ltd (the Equity Companies).

- [7] Mr. Asfar proceeded, through the Equity Companies, to enter into 2 lease agreements with Opes Properties (Pty) Ltd (Opes). Besides the Equity Companies entering the leases, Mr. Asfar also bound himself as surety for the obligations of the Equity Companies to Opes.
- [8] The first lease agreement was signed between Equity Cheque Capital Corporation (Pty) Ltd and Opes On 7 April 2017 and the second, between Equity Cheque Card Corporation (Pty) Ltd and Opes on 28 July 2017.
- [9] The essence of the complaint lodged by Opes arises from letters written by Mr. Naude after the conclusion of the respective leases. There is nothing to indicate that the conclusion of the leases or the subsequent letters sent were, at the time, contentious. It was only after the business dealings between Opes and the Equity companies soured and Opes was unable to execute upon judgments it had obtained against them and Mr. Asfar that these letters attained significance.

- [10] It is not in issue that various letters were written by Mr. Naude to Opes or that in them, the reference, in the heading of each as to who the client upon whose behalf the funds were held, was not clear and unequivocal. In each letter, more than one party was reflected as the client being variously Mr. Asfar and one or other of the Equity Companies.
- [11] This lack of clarity is the fulcrum of the complaint made by Opes. Mr. Naude for his part contended that he had always acted for Mr. Asfar and that the funds, albeit that he had indicated for whom they were available, were always the funds of Mr. Asfar and subject to disposition on his instructions.
- [12] Opes for its part contended that given the headings in the letters, the funds were held in trust for the Equity Companies and that in consequence, the letters constituted representations upon which Opes had relied. This reliance, so the argument went, had been to its detriment.
- [13] After judgment was granted, Opes attempted to execute by directing the Sheriff to the office of Mr. Naude, as Opes claimed to be under the impression that his firm was holding substantial funds in its trust account on behalf of the Equity companies. The reason for such a belief was predicated solely on the letters that had been written after the conclusion of each of the leases.
- [14] When the sheriff attended the offices of Mr. Naude, he was informed that he held no funds on behalf of the Equity companies.
- [15] Opes then instituted action in the High Court. Various orders were granted, and reasons thereafter furnished on 13 November

2020. In those proceedings, the court held inter alia that:

“[7] Based on numerous representations made by Mr. Wynand Naude (“Mr Naude”) an attorney and representative of the third respondent, the applicant believed that the third respondent held in excess of R50m of unencumbered cash on behalf of his client, Capital and the first and second respondents.

- [8] When the sheriff attempted to execute the warrant, the third respondent advised that he/it never held any funds for Capital and Card, and no assets could be located for them.”

And

“[41] The applicant claimed that pursuant to enquiries made, the third respondent’s banker confirmed that an amount of R50m was invested with First National Bank on behalf of their client, being the third respondent.

- [42] The applicant feared that should the first respondent leave South Africa; he would leave no assets behind to satisfy a judgment that could potentially follow.

[43] The applicant claimed that both the first and second respondents resided in rented properties, drove with cars that were not registered in their names, and any payments made by them were done via the offices of the third respondent.”

“[64] It was apparent from the record, that the FNB account of Wynand Naude Inc reflected a credit balance of R50 050 000.00 as at 30 November 2017. It was furthermore apparent that these funds were transferred into the third respondent’s bank account over a period as from the 24 August 2015 to the 15 December 2016.

[65] The second respondent contended that the third respondent’s business account statement, dated 26 January 2018, confirmed that the third respondent made an onward swift transfer of R119 800 000.00 to Worldwide Capital on the 27 December 2017 approximately 12 months later”.

[16] While Opes was aggrieved that it was unable to execute and satisfy the judgment it had obtained against the Equity Companies and Mr. Asfar, it was simply not open to it to assert to the LPC that Mr. Naude had “lied and brought the legal profession into disrepute and furthermore caused damages to Opes Properties (Pty) Ltd as a result of his fraudulent misrepresentation of the financial status of ECC.”

[17] What is clear is that none of the letters upon which Opes had based its claim of a misrepresentation was in its terms an undertaking by Mr. Naude or his firm to hold on behalf of Opes any of the funds that were in trust.

[18] It is evident from the subsequent investigation conducted by the LPC and as found by the Court in the Cape, that at the time that the letters were written by Mr. Naude, he indeed did hold the funds that he said he did in his firm’s trust account. Both of his letters were entirely accurate insofar as this aspect was concerned.

[19] It is to my mind a red herring whether the client of Mr. Naude, at the time that he sent the letters, was either the Equity Companies or Mr. Asfar. It matters not with regards to the subsequent disposition of the funds, for whom he acted.

[20] In view of the fact that none of the letters were or could be construed in any way as undertaking an obligation by Mr. Naude or his firm or his client, whether it was the Equity Companies or Mr. Asfar[2], there was no concomitant duty upon Mr. Naude or his firm or his client to inform Opes of any instructions received to transfer the funds held in his trust account on their behalf to a third party.

[21] On 27 December 2017 and upon instructions of his client (whether it was one of the Equity Companies or Mr. Asfar), the funds which had been in the trust account and to which the letters had referred were all transferred to a third party. This occurred some 6 months before the relationship between the Equity Companies and Opes soured and some 15 months before Opes obtained judgment in

its favour on 4 March 2019.

- [22] Put simply, he was bound to do what he had been instructed to do[3] by his client and he did so.
- [23] The proceedings before the court in the Cape, were brought for the purposes of trying to obtain information for Opes to execute upon its judgments. While it is understandable that it embarked upon this course of action, it knew that Mr. Naude had not undertaken any legal obligation to it on behalf any client and furthermore that there had been no “fraudulent misrepresentation.” Opes knew that the two leases signed with the Equity Companies had both been signed prior to the letters having been sent by Mr. Naude. For Opes, the die had been cast when the leases were signed.
- [24] The proceedings in the High Court in the Cape, were for all intents and purposes nothing more than a proverbial “fishing expedition” to try and find assets against which execution of its judgment could be made. It yielded nothing of substance to Opes save for a referral of Mr. Naude to the LPC.

ALLEGED NON-COMPLIANCE WITH RULES OF PRACTICE

- [25] On 24 June 2020, Opes lodged a complaint with the LPC against Mr. Naude in which it alleged that he had misrepresented that he was in possession of certain funds in his trust account. It was also alleged that had misrepresented that he had never held any funds on behalf of the Equity Companies and that he had “lied and brought the legal profession into disrepute and furthermore caused damages to Opes Properties (Pty) Ltd as a result of his fraudulent misrepresentation”.
- [26] In addition, to the complaint lodged by Opes on 24 June 2020, when the reasons given by the High Court in the Cape for the orders it had made were handed down on 13 November 2020, this also contained a referral to the LPC.
- [27] The High Court in the Cape found:
- “[89] None of the bank statements provided by Mr. Naude on behalf of the third respondent were endorsed as a trust account.”*
- [28] This was the basis upon which the LPC in Gauteng was to conduct its investigation – pursuant to the referral by the Court.
- [29] Upon receiving the complaint, the LPC embarked on an investigation against Mr. Naude and his firm. An auditor, Mr. Nyali was appointed and commenced with an investigation on 18 February 2021. The investigation by Mr. Nyali dealt only with the books and records of the firm and did not take the form of a forensic audit but was rather a “desktop evaluation”.

[30] Mr. Nyali requested certain documents from Mr. Naude, these were furnished and after consideration of these documents, a report was prepared. In the words of Mr. Nyali “I did not perform any substantive audit procedures on the documentation and accounting records presented.” It is in this context that the report and findings of Mr. Nyali are to be considered.

[31] Since the period that was being investigated, in part, pre-dated the coming into operation of the Legal Practice Act[4] on 1 November 2018, it was necessary for Mr. Nyali to also have regard to the Attorneys Act[5], and Rules for the Attorneys Profession which were applicable under that Act.

[32] Mr. Nyali formed the view that Mr. Naude did not comply with the Attorneys Act and Rules in that he had:

[29.1] failed to obtain the client’s written confirmation of the investment as soon as reasonably possible or notify the client forthwith thereof in writing (rule 35.16.2 of the Rules of the Attorneys' Profession) – the first finding.

[29.2] failed to invest trust monies in an interest-bearing account that is endorsed as a section 78(2A) investment (section 70(2A) of the Attorneys Act) – the second finding.

[29.3] failed to promptly deposit the funds withdrawn from an investment account into the trust account (rule 35.13.7.1.6 of the Attorneys rules)- the third finding.

[29.4] failed to ensure that the total amount of money in the second appellant’s banking account at any date is not less than the total amount of the credit balances of the trust creditors (rule 54.14.8 of the SALPC rules) – the fourth finding.

[29.5] failed to immediately report in writing to the Council that the total amount of money in the second appellant’s bank accounts was less than the total amount of credit balances of the trust creditors (rule 54.14.10 of the SALPC rules) – the fifth finding.

[33] Mr. Naude was not given an opportunity to address these findings. These were addressed in the present proceedings.

RESPONSE TO THE COMPLAINTS RAISED IN MR. NYALI’S REPORT

The first finding

[34] In regard to the finding that Mr. Naude had failed to obtain the client’s written confirmation of the investment as soon as reasonably possible, or notify the client forthwith thereof in writing, this was dealt with by Mr. Asfar in an affidavit filed by him in which he explained that Mr. Naude had explained to him that trust money could be invested, but that depending upon the type of investment, the protection of the Fidelity Fund may be lost. He also stated inter alia that:

“I, with the knowledge, consent and approval of my brother, instructed the first respondent verbally during April 2016 and again in writing by WhatsApp on 11 October 2017, to withdraw the monies paid into the second respondent’s trust account and to invest the monies in an interest-bearing account with FNB. Copies of the WhatsApp instructions to the first respondent is annexed hereto. . .”

The second finding

- [31] In regard to the finding that Mr. Naude failed to invest trust monies in an interest-bearing account that is endorsed as a section 78(2A) investment (section 70(2A) of the Attorneys Act), this coincided with the finding made by the Cape High Court that “None of the bank statements provided by Mr. Naude were endorsed as a trust account.”
- [32] This was explained by Mr. Asfar on the basis that Mr. Naude had explained to him that if the funds were to remain in trust and under the umbrella of protection provided by the Attorneys Fidelity Fund, then interest would not accrue to Mr. Asfar.
- [33] This explains why some of the bank statements do record that the firm opened accounts in terms of either section 78(1) – an ordinary trust account or, section 78(2A), a trust investment account.
- [34] The investment made on behalf of Mr. Asfar, was accordingly not at the time of the statements upon which the LPC relied in its application, subject to declaration in terms of the Act. The position in this regard changed materially after the LPA came into operation where in terms of section 86(4), even if a client wanted to earn the interest on trust investments for himself, a declaration to the Fidelity Fund in this regard was required and they would sweep by EFT transfer a percentage of the interest earned on those accounts.
- [35] That all such investment accounts were disclosed on Mr. Naude’s applications for a fidelity fund certificate is not in issue.
- [36] In any event, since all accounts were properly disclosed, both in terms of the Attorneys Act and LPA, nothing turns on the fact that a specific bank statement may not have contained an endorsement as to the type of account which had been opened. The description of the account contained on the printed statement is something which is peculiarly under the control of the Bank concerned

and any oversight or omission is on their part and not that of Mr. Naude.

The third finding

- [37] Regarding the finding that Mr. Naude failed to promptly deposit the funds withdrawn from an investment account into the trust account, the finding by Mr. Nyali in this regard was predicated on the fact that Mr. Naude had on the instructions of the client closed certain investment accounts.

- [38] The proceeds of those accounts had been paid into his firm's business account and instead of immediately transferring those proceeds to the firm's trust account and thereafter effecting onward transfer in terms of Mr. Asfar's instructions, he had a few days later (a period of 5 days) then transferred the funds in accordance with Mr. Asfar's instructions.
- [39] This occurred on 22 December 2017. This was a Friday, and the onward transmission occurred on the following Wednesday 27th December
2017. It must be borne in mind that the 23rd and 24th of December 2017 fell on the weekend, Monday 25th and Tuesday 26th were public holidays and thus the onward transmission occurred on the very next business day.
- [40] While it is technically correct for Mr. Naude to have transferred the funds immediately into the trust account and thereafter for them to have been transferred on, it would in the circumstances have been nothing more than paying "lip service" to compliance. The single oversight in this regard is certainly not sufficient for the LPC to have taken the view of it that it did.

The fourth and fifth findings

- [41] Lastly, the findings that Mr. Naude failed to ensure that the total amount of money in the second appellant's banking account at any date is not less than the total amount of the credit balances of the trust creditors and failed to immediately report in writing to the Council that the total amount of money in the second appellant's bank accounts was less than the total amount of credit balances of the trust creditors are simply not borne out by the facts.
- [42] During his desktop evaluation, Mr. Nyali discovered what purported to be a trust shortfall of R3 027.27. This arose from a difference between what was reflected in the bank statements as a trust credit balance and what was reflected in the books of the firm as its trust credit liability. The balance in the trust bank account was R52 360 126.23 (over R52million) and the balance in the trust ledger R52 357 098.95. This related to the period ending 28 February 2021.
- [43] Mr. Nyali engaged with Mr. Naude's bookkeeper who informed him that the discrepancy was possibly because of the firm having previously moved to a new accounting system and there being the transfer of incorrect opening balances. Mr. Naude's bookkeeper was unable to take the matter any further.
- [44] In the absence of a substantive forensic audit and given what is in its terms an inconsequential discrepancy, this ought properly, at least at that stage, to have been dealt with on the basis that it was "de minimis" and that it did not impugn either the veracity of the information in the books of the firm or the integrity and honesty of Mr. Naude.
- [45] Subsequently, the firm's auditor in conducting the annual audit, ascertained that there was in fact no trust shortfall at all. This is not in dispute. Had Mr. Nyali conducted a proper audit this would no doubt have been discovered by him.

CIRCUMSTANCES LEADING TO THE URGENT APPLICATION

- [46] Mr. Nyali issued his report on 13 May 2022. This was just shy of two years after Opes had lodged its complaint and 15 months after Mr. Nyali had been instructed to proceed. On 20 June 2022, Mr. Nyali's report was furnished to Mr. Naude and on 19 July 2022, referred to an LPC investigating committee. The report together with the complaint of Opes was considered by the investigating committee on 23 August 2022.
- [47] Somewhat surprisingly, Mr. Naude was not informed when the investigating committee was to meet and consider the matter
- nor was he invited to participate. Had he been invited and had he presented what he was able to place before the Court a quo, the decision taken would likely have been materially different.
- [48] The LPC investigating committee such as it was, appears to have consisted of only one member who also conducted a "desktop" evaluation of the matter. In the memorandum of the investigating committee, the member accepted uncritically and without more the reasons handed down by the Cape High Court and concluded in interpreting those reasons that "the last sentence of the quoted paragraph (78) is in my view a judicial pronouncement that the actions of the Respondent (Naude) in regard to the R50m was tantamount to fraudulent misrepresentation." It is unfortunate that the sole member of the committee did not consider the entirety of the body of evidence that was available or see fit to hear Mr. Naude.
- [49] For the reasons set out above, there was neither a misrepresentation made by Mr. Naude nor any actionable breach of the rules of professional conduct or mismanagement of his trust account so as to justify the recommendation that was made by the investigating committee that he be suspended from practice.
- [50] Had the members of the Gauteng Provincial Council of the LPC properly considered all the documents that were before them, they would have realized that there was simply no case, prima facie or otherwise, for the suspension of Mr. Naude. The failure on the part of the LPC to afford Mr. Naude a right to be heard does not appear to have moved the members of the Council in their consideration of the matter and this is a matter of concern.
- [51] Although the events in question had occurred some five years previously and the high watermark of the complaints, at least insofar as the protection of the public was concerned, was the R3 027.00 discrepancy, the LPC took more than two years to complete the investigation and reach its decision.
- [52] There is no explanation what transpired between 23 August 2022 and 13 October 2022, when the decision to apply for his suspension was communicated to Mr. Naude. It was also not disclosed to him that the LPC had also resolved to launch such proceedings on an urgent basis.

- [53] He was not furnished with any reasons for the decision either. It bears mention that the report of the investigating committee did not find its way into the founding papers when the application was issued and had to be elicited through a request in terms of rules 35(12) and (14) of the uniform rules of Court.
- [54] The LPC emailed its application to Mr. Naude on 21 November 2022. The application indicated that it would be enrolled for hearing in the urgent court on 6 December 2022 some two weeks later.
- [55] Having regard to what is set out above with regards to the lack of merit with the Opes complaint and absence of any non-compliance with the rules that rose to the level requiring suspension from the roll, the refusal to furnish a Fidelity Fund Certificate for the following year placed Mr. Naude in an invidious position.
- [56] Even though the founding affidavit deposed to on behalf of the LPC asserts on no less than nine occasions that Mr. Naude was dishonest or had made himself guilty of dishonesty, properly construed, these allegations were simply not sustainable on the information that was before the Court.
- [57] On 24 November 2022, a letter was addressed to the LPC on behalf of Mr. Naude addressing the various issues raised in the application. In the letter, he undertook inter alia to retire at the age of 66 and to dispose of his practice. He also undertook to “sell his practice and transfer all trust monies to a colleague, who will also take over his employees, and undertakes to the GPC [Gauteng Provincial Council of the LPC] a closing auditor’s report within the prescribed time period of 3 months thereafter, before 31 May 2023.”
- [58] This drastic course of action was precipitated by the refusal of the LPC to issue a Fidelity Fund Certificate, the consequence of which would be, if he continued to practice without it, criminal conduct in terms of section 93(8)[6] read with section 84(1)[7] of the LPA. The LPC for all intents and purposes ended the 37-year career of Mr. Naude.
- [59] Despite the failure to properly investigate or consider the matter, the LPC nonetheless decided to approach the Court on an urgent basis.
- [60] Two postponements ensued to afford Mr. Naude an opportunity to respond properly to the application. It bears mention that on no less than five occasions, Mr. Naude sought an audience with the LPC to discuss the application that had been brought against him and on each occasion was rebuffed. When the application was eventually decided, it was done so in the Urgent Court before a single judge.
- [61] It is not in issue that applications for the suspension of errant practitioners are inherently urgent. This is so because usually there is some pressing need for the Court to suspend the practitioner to protect both the public and the profession at large against either continued or possible future conduct. In the present matter, there was simply no prima facie case against Mr. Naude.

- [62] The LPC is, besides the statutory regulator of the legal profession, also the *custos morum* or guardian of morals for the profession and its members. It is the duty of the LPC, acting in this capacity, to safeguard both the profession as well as its members[8]. The LPC is obliged, once concerning conduct which represents a risk or danger to either the public or the profession, to bring this to the attention of the Court.[9] This is to be done responsibly[10] and after due process has been followed.
- [63] The LPC as *custos morum* is expected to exercise great caution and to avoid recklessness or irresponsibility in its institution of proceedings for misconduct against a legal practitioner. It is expected that it acts to the same standard and with the same degree of care to the Court as any of the legal practitioners whom it regulates. This is so because besides its regulatory function over practitioners, it is enjoined by section 5(i) of the LPA to enhance access to the legal profession.
- [64] It is the role of the LPC to place facts before the Court which the Court is to evaluate. In this regard it must place the totality of the facts before the court.
- [65] The LPC sought to use its power to withhold the issue of a Fidelity Fund Certificate against Mr. Naude to make him acquiesce to the course of action that they had decided upon. It conducted itself, by all accounts, not as a *custos morum* but rather as a litigant having a direct personal interest in the matter. This is not its function.
- [66] The way in which the LPC conducted this matter is to be deprecated. A proper consideration of the facts would have made plain that there was no basis to apply to Court for the suspension of Mr. Naude from the roll of attorneys and conveyancers. In this regard, the present case is to be distinguished from cases such as *Botha v Law Society of the Northern Provinces*[11] where it was found that no order for costs should be made against the *custos morum*. The present case is not one where the degree of severity is in issue and that there was an unimpeachable justification for the bringing of the proceedings. Here there was to my mind a manifest failure to properly consider what was before it and an unnecessary and unjustified abdication of its own responsibility to the urgent court.

COSTS

- [67] In the same way that the LPC argues that it is acting in a wider interest and ought in applications where an order for suspension or striking is granted, to be awarded punitive costs, so too should the same criteria apply when it fails in such applications.
- [68] There is no reason why Mr. Naude should be out of pocket at all. There was no case against him and had the LPC conducted a proper investigation – both of his records and of the complaint and afforded him a right of hearing, the application against him could have been avoided altogether.

- [69] In *Seima NO and Others v Master of the High Court Johannesburg*[12] it was held that “An Officer of the Court may not simply convey allegations to a Court where there is good reason to believe they are not truthful or factually based and this duty becomes more acute where imputations of dishonesty are conveyed.” On this score both the investigating committee and the Gauteng Council of the LPC failed.
- [70] It is for this reason that it is apposite that the order for costs to be made in this matter is on the scale as between attorney and own client. For the assistance of the taxing master, having regard to the provisions of the tariff, had the costs order been made as between party and party, the scale of counsels’ costs awarded would have been on scale C.

ORDER

[71] In the circumstances, I propose the following order:

[71.1] The appeal is upheld with costs on the scale as between attorney and own client.

[71.2] The order of the Court a quo is set aside and replaced with the following:

“The application is dismissed with costs on the scale as between attorney and own client.”

A MILLAR

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED

E VAN DER SCHYFF

I AGREE,

E LABUSCHAGNE

HEARD ON: 21 MAY 2025 JUDGMENT DELIVERED ON: 12 AUGUST 2025 COUNSEL FOR THE APPELLANTS: ADV. HF GEYER INSTRUCTED BY: SMIT & MARAIS REFERENCE: MR J SMIT COUNSEL FOR THE RESPONDENT: MS N COLLETT INSTRUCTED BY: ROTH & WESSELS REFERENCE: MR. R STOCKER

- [1] Leave to appeal to the Full Court was granted on 3 August 2023, the Court a quo having refused leave on 9 June 2023.
- [2] See for example the case of an *adjectus solutionis causa* distinguished from an ordinary agent in *Stupel & Berman Inc v Rodel Financial Services (Pty) Ltd* 2015
- (3) SA 36 (SCA) at para [17].
- [3] *Bloom’s Woollens (Pty) Ltd v Taylor* 1962
- (2) SA 532 (A) at 538H.

- [4] 28 of 2014.
- [5] 53 of 1979.
- [6] The section provides: “. . .that any person who contravenes section 84(1) or (2) or section 34, in rendering legal services – (a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; (b) is on conviction liable to be struck off the Roll; and (c) is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.”
- [6] The section provides: “. . .that any person who contravenes section 84(1) or (2) or section 34, in rendering legal services –
- (a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment;
 - (b) is on conviction liable to be struck off the Roll; and
 - (c) is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.”
- [7] The section provides that every attorney who practices for their own account or as a director of a juristic entity “must be in possession of a Fidelity Fund Certificate”.
- [8] Claasen and Another v Free State Law Society and Others 2020 JDR 0337 (FB) at para [12].
- [9] South African Legal Practice Council v Segaole 2024 JDR 5218 (GP) at para [1]. See also Jiba and Another v The General Council of the Bar of South Africa and Another 2019
- (1) SA 130 (SCA) at para [72] as
- [10] Mavudzi and Another v Majola and Others 2022
- (6) SA 420 (GJ) at para [34].
- [11]
- [2008] ZASCA 106; 2009
- (1) SA 227 (SCA) at para [22].
- [12] 2025 JDR 3026 (GJ) at para [30].

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Prepared on 8 October 2026 · Esheria