

SOUTH AFRICA / JUDGMENT

**South African Legal Practice Council v
Bobotyana (2259/2019) [2020] ZAECHGC 114;
[2020] 4 All SA 827 (ECG) (13 October 2020)
[2020] ZAECHGC 114**

COURT

Eastern Cape High Court, Grahamstown

BEFORE

P N Kroon, NG Beshe

CASE / FILE NUMBER

2259/2019

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IN

THE HIGH COURT OF SOUTH AFRICA
EASTERN
CAPE DIVISION, GRAHAMSTOWN
REPORTABLE

Case No:

2259/2019

Date

Heard: 6 August 2020

Date

Delivered: 13 October 2020

In

the matter between:

THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
APPLICANT
and
MZWANDILE
TONY CEDRIC BOBOTYANA
RESPONDENT

JUDGMENT

KROON AJ:

1. In early 2016 Mr Azal Muhammad (“Muhammad”) engaged an attorney in Komani (formerly Queenstown), the Respondent, Mr Mzwandile Tony Cedric Bobotyana (“Bobotyana”), for assistance.
2. He had his eye on some immovable property in a rural town in the Eastern Cape. The two came to an agreement. Bobotyana was to facilitate the sale of the property. He had a power of attorney to sell the property, so he said. Muhammad paid Bobotyana more than R2 million to purchase the property. What Muhammad did not know was that the arrangement was a sham. Bobotyana had no intention of selling him the property and Muhammad was not to get a cent of his money back from Bobotyana.
3. The Courts have repeatedly emphasized that impeccable ethical standards are required of an attorney who practises law. He is to conduct himself with the utmost integrity and with scrupulous honesty. The Supreme Court of Appeal has further commented that the heavy responsibility which officers of the Court are required to shoulder in “upholding the Constitution” is “without parallel”.^[1]
4. This unfortunately is a story of a dishonest attorney abdicating that responsibility and bringing disgrace and shame on the legal profession.
5. The Applicant, the South African Legal Practice Council (“the Legal Practice Council”), as established by Section 4 of the Legal Practice Act 28 of 2014 (“the LPA”) seeks to strike the name of Bobotyana off the roll of attorneys together with prayers for ancillary relief.
6. Bobotyana was interdicted from practising as an attorney on 2 October 2018 pending an application to strike his name from the roll of attorneys, which application was required to be launched within 3 months, on pain of the interdict lapsing^[2]. The interdict proceedings were launched by the Law Society of the Cape of Good Hope (“the Law Society”) prior to the implementation of the LPA. Due to administrative challenges which are not relevant, the envisaged application was not launched within the stipulated 3 month period and the interdict accordingly lapsed.
7. The LPA ushered in a new era of governance within the legal profession in terms of which the Attorneys Act 53 of 1957 (“the Attorneys Act”) was repealed, the four Law Societies established in terms of Section 56 of the Attorneys Act were dissolved and replaced by nine Provincial Councils established in terms of section 23 of the LPA, which Provincial Councils in turn fall under the Legal Practice Council, the body tasked with exercising jurisdiction over all legal practitioners.

8. The objects of the Legal Practice Council include promoting and protecting the public interest[3], regulating all legal practitioners and all candidate legal practitioners[4] and enhancing and maintaining the integrity and status of the legal profession[5]. The Legal Practice Council is the custodian of the roll of legal practitioners[6]. In order to achieve these objects the Council is empowered to do all things necessary for the proper and effective performance of its functions or the exercise of its powers[7]. The powers of the Legal Practice Council include those of instituting or defending legal proceedings on behalf of the Council[8].
9. This application, having been launched after 1 November 2018, must be adjudicated in terms of the LPA although the conduct of Bobotyana

must be adjudged in accordance with the law as it stood at the time that it took place, namely before the repeal of the Attorneys Act and when the rules of the Law Society were still applicable[9].

10. Borrowing from the language of the Attorneys Act, the LPA similarly requires that a person be fit and proper in order to practise as either an attorney or an advocate[10]. The LPA expressly provides that this Court retains its power to strike the name of an errant attorney off the roll of practising attorneys[11].
11. Thus, as was the position in terms of the Attorneys Act, the central question before the Court remains whether Bobotyana is a fit and proper person to practise law and, if not, what order is to be issued. It follows that the jurisprudence developed under the Attorneys Act will remain applicable to the adjudication of applications of this nature brought in terms of the LPA.
12. The proceedings before the Court are of a disciplinary nature and are sui generis. The Court is obliged to embark upon a three stage enquiry which has been summarised as follows:

“First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. Second, the court must consider whether the person concerned ‘in the discretion of the court’ is not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. And third, the court must inquire whether in all the circumstances the attorney is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice.”[12]
13. The three stages are dealt with separately below. It is necessary, at the outset, to set out the factual background which gave rise to the application.

THE FACTUAL MATRIX

Introduction

14. A feature of the application is that the material facts, including those demonstrating the widescale misappropriation of trust funds by Bobotyana, are not in dispute.
15. Ms Watt, who appeared on behalf of the Legal Practice Council, presented a compelling case as to the extent and gravity of the misconduct committed by Bobotyana. The founding affidavit was deposed to by Janine Kim Myburgh, a member of the Legal Practice Council. There was also an affidavit deposed to by the victim of Bobotyana's conduct, Muhammad. Trust bank account statements ("the trust account statements") which had been subpoenaed by the South African Police Service ("the SAPS") were placed before the Court and there was a forensic analysis of these statements performed by a member of the Asset Forfeiture Unit in East London, Ms Longile Lumko-Mazwayi.
16. Mr Ntlokwana, who appeared on behalf of Bobotyana, quite correctly acknowledged the challenges which confronted his client given the manner in which the answering affidavit had been formulated. In particular Mr Ntlokwana did not seek to dispute that the affidavits, properly interpreted, demonstrated that Bobotyana had made himself guilty of the repeated misappropriation of trust funds.

Chronology

17. Bobotyana was admitted to practise as an attorney on 9 September 2004.
18. At the time of his misconduct, he was practising under the name and style of Bobotyana and Company at No. 12 Komani Street, Komani Park, Komani.
19. Bobotyana held out to Muhammad that he was authorized to sell immovable property situate at Erf 58, corner Indwe and Nonesi Roads, Lady Frere ("the property"), representing to Muhammad that he was in possession of a special power of attorney to do so.
20. Relying on this representation, on or about 7 March 2016 Muhammad entered into a Deed of Sale drawn up by Bobotyana for the purchase of the property in an amount of R2 150 000.00. The purchase price was to be paid in cash.
21. There were material irregularities tainting the conclusion of the sale agreement. Firstly, the property formed part of a deceased estate and no executor or executrix had been appointed to act on behalf of the deceased estate. Until such time as the requisite appointment was made, it would not have been possible for the property to have been lawfully alienated. Accordingly the person who initially purported give Bobotyana the mandate to sell the property, Ms Cannady-Masimini, the widow of the late owner of the property, was not empowered to give Bobotyana such a mandate in the first place. Secondly, Ms Cannady-Masimini had, in any event, cancelled the power of attorney which she had given to Bobotyana prior to his purporting to sell the property to Muhammad.

Thirdly, Bobotyana inexplicably signed the deed of sale in his personal capacity.

22. For the purposes of this application, it is unnecessary to dwell on the conduct of Bobotyana insofar as it relates to the conclusion of the sale agreement given the admitted far more serious misconduct described below, save to record that the manner in which he conducted himself when it came to the conclusion of the purported deed of sale and in particular the circumstance that he was not possessed of a valid mandate to sell the property does nothing to dispel the conclusion which the Court reaches as to the state of mind of Bobotyana, which is that at no stage during any of his interactions with Muhammad was he possessed of a genuine intention to sell the property to Muhammad.
23. Pursuant to the conclusion of the sale agreement an amount of R2 176 000.00[13] was transferred in tranches by Muhammad into Bobotyana's trust account. The first payment was made on 2 March 2016 and the final payment on 14 April 2016.
24. An analysis of the trust account statements reveals the following payments as made by Muhammad into Bobotyana's trust account:
 - 24.1. On 2 March 2016 an amount of R374 900.00;
 - 24.2. On 3 March 2016 an amount of R607 650.00;
 - 24.3. On 15 March 2016 an amount of R200 000.00;
 - 24.4. On 4 April 2016 an amount of R120 000.00; and
 - 24.5. On 14 April 2016 an amount of R873 450.00.
25. It is not in dispute that, as of 31 August 2016, Bobotyana's trust account held the princely sum of R81.86. The natural question which then arises is, what happened to all the monies which Muhammad transferred into Bobotyana's trust account?
26. It was common cause that Bobotyana was the sole signatory to the trust account. He thus had complete control over any monies which were deposited into that account and was responsible for all the transfers from and withdrawals out of the trust account.
27. An analysis of the trust bank account statements reveals how, between 2 March 2016 and 31 August 2016, Bobotyana dissipated the funds deposited into his trust account by Muhammad, by way of more than 70 withdrawals from the trust account.
28. In terms of the expenditure chart drawn up by Ms Lumko-Mazwayi of the Asset Forfeiture Unit in East London, transactions which were identified as having been effected by Bobotyana between 2 March 2016 and 31 August 2016 utilising the funds in the business trust account included the following:
 - 28.1. Cash amounts totalling R160 000.00 were withdrawn;
 - 28.2. Cheques totalling R32 952.90 were cashed;

28.3. An amount of R40 000.00 was paid to Wesbank in respect of one of Bobotyana's personal vehicles;

28.4. An amount of R13 000.00 was paid to Bobotyana's wife;

28.5. An amount of R866 786.00 was paid to one Z Yafele; and

28.6. Internet payments totalling R807 936.59 were made, the details of all of which could not be ascertained. Among the internet payments was however a payment to JHI Properties for R56 472.32 and a purchase of debentures for R15 363.13.

Attempts by Muhammad to recover the monies paid to Bobotyana

29. After the conclusion of the purported Deed of Sale, and when Bobotyana failed to make any arrangements for Muhammad to sign the transfer documents and when Mr Muhammed's follow ups with Bobotyana yielded no fruit, Muhammad, understandably so, became concerned.
30. He approached another local Komani attorney, one Bester of Bowes McDougall Incorporated, to assist him and to furnish him with independent advice.
31. The Court pauses to note, with regret, that it is a sad day when one member of the legal profession is asked to protect a member of the public from the conduct of a colleague.
32. When Muhammad approached Bester he had already paid Bobotyana an amount of R1 312 550.00.
33. It would seem that what then happened is that it was arranged between Bester and Muhammad that the remaining portion of the purchase price, an amount of R837 450.00, would be paid into the trust account of Bowes McDougall.
34. Bester would then communicate with Bobotyana and explain to him that the outstanding portion of the purchase price was secured but that, in order to allay Muhammad's concerns and before the transfer of the outstanding amount to Bobotyana, it would be requested of Bobotyana that he both confirm that the monies already paid to Bobotyana were safely invested and furthermore that Bobotyana provide a copy of the power of attorney which he contended was in his possession.
35. Thus, on or about 7 April 2016, Bester transmitted a letter to Bobotyana reading:

"Dear Sir

ERF 58 LADY FRERE

We refer to the purchase of Erf 58 Lady Frere from the Estate of Late Masimini to our client, Mr A Muhammad.

The purchase price of the property in terms of the Deed of Sale is R2 150 000 (Two million one hundred and fifty thousand

rand). Our client advised that he made payments to your Trust Account in the amount of R1 312 550 (One million three hundred and twelve thousand five hundred and fifty rand) towards the purchase price, and the balance of R837 450 (Eight hundred and thirty seven thousand four hundred and fifty rand) was paid into our Trust Account, we attach proof of these payments.

We will invest the money and provide you with a bank guarantee for payment thereof to your office on date of registration.

You are kindly requested to confirm that the purchase price paid at your office is invested and to advise us of the interest rate applicable on the amount invested. You are also requested to provide us with a copy of proof of the investment.

Due to the fact that the full purchase price has been paid in cash to our respective offices, you are kindly requested to provide us with the transfer documents that our client must sign to enable you to proceed with the transfer and to provide our client with the title deed.

You are kindly requested to also provide us with a copy of the Power of Attorney under which you act.

We trust you find the above in order and wish to advise that if you need any assistance in this matter, we will gladly assist wherever we can.

Yours faithfully”

(own underlining)

36. The lack of transparency in the response received from Bobotyana was not appropriate.
37. Bobotyana’s letter in response, which was received on or about 12 April 2016, read as follows:

Your letter dated 07 April 2016 has reference.

You may have now understand [sic] that the agreement with your client in terms of the contract was that payment must be made by the 20 March 2016.

Your client knows what the agreement was and we therefore request you to advise your client to make payment to us immediately before we can respond to your requests.

Right are reserved.

Yours faithfully”

38. Muhammad thus found himself in a precarious position. On a contractual level, he was obligated to pay the outstanding balance to Bobotyana or risk losing the property or being sued for the balance of the purchase price. On the other hand, he had concerns as to the motives of Bobotyana given the manner in which he had conducted himself.

39. Muhammad ultimately decided that, despite his unease about the situation, he did not want to risk losing the property (Bobotyana had threatened to cancel the sale if the amount of R837 450.00 was not paid into his trust account) and that he had no alternative but to comply with his contractual obligations and to pay Bobotyana the outstanding portion of the purchase price.
40. The conduct of Bobotyana in demanding the further payment of R837 450.00 was disgraceful. As demonstrated above, he was seeking to persuade Muhammad to pay him the outstanding amount under false pretences as he did not have a mandate to sell the property. To crown it all, at the time of making the demand, as appears from the trust account statements, he had already misappropriated a substantial amount of the monies which he had received from Muhammad. For Bobotyana to then have extorted from Muhammad the further amount of the R837 450.00 so that he could misappropriate these monies as well, was conduct of a man with no conscience.
41. Having made the transfer of the R837 450.00 into the trust account of Bobotyana, Bester then wrote a follow up letter on or about 21 April 2016 to Bobotyana in terms of which he recorded as follows:

We refer to the above matter, our letter dated 7 April 2016 and your reply dated 12 April 2016. You persisted in receiving full payment of the purchase price into your account for the purchase of this property. This despite our disagreement that you needed an amount of cash in your account, as a guarantee from Nedbank that the balance is available on registration should have been sufficient to cover the purchase price as stated in paragraph 11 of your Deed of Sale.

However, to secure the purchase of the property for our client, the full balance of the purchase price was paid over into your bank account. You advised in your letter of 12 April 2016 that you will then respond to our request on payment, which to date you have not done.

Our client has advised us that you give him the run-around and that you are never available to see him or to provide him with the documents we requested.

You now have the full purchase price in your Trust account and you are to reply to our requests urgently.

(our underlining)

42. There was no meaningful response to this letter by Bobotyana.
43. What Bobotyana did however do was to continue with the systematic misappropriation of the funds which had been paid to him by Muhammad.
44. On or about 27 May 2016 Bester referred a complaint to the Law Society about the conduct of Bobotyana. It was a substantial and detailed complaint spanning a number of pages and enclosing relevant documentation such as the correspondence which had been exchanged between him and Bobotyana.

45. The Law Society attempted to investigate the matter requiring of Bobotyana to furnish it with copies of his trust account statements as from 31 March 2016.
46. Bobotyana refused to co-operate with the Law Society. Instead he asserted, without any foundation, that Bester had no mandate to refer a complaint to the Law Society on behalf of Muhammad.
47. The refusal by Bobotyana to cooperate with the Law Society was conduct unbecoming of an attorney.
48. The Law Society was, at the time, the watchdog of the profession and was obliged to investigate complaints laid against practitioners.

Bobotyana owed a duty vis-à-vis the Law Society. This duty finds expression in the obligation resting on Bobotyana to have fully participated in any enquiry or investigation conducted by the Law Society[14].

49. The Law Society thus had no alternative but to institute the proceedings to interdict Bobotyana from practising pending an application to have his name struck from the roll, which proceedings were instituted on 14 November 2016.
50. The efforts of Bester to assist Muhammad did not end at the referral of the complaint to the Law Society. Alive to the fact that the administrative disciplinary/investigative processes instituted by the Law Society may take some time and may not result in Muhammad being reimbursed, Bester again engaged Bobotyana further in attempts to secure the refund of the monies which Bobotyana had misappropriated from Muhammad.
51. On or about 1 August 2016 Bester met with Bobotyana by which time it had become clear that the deed of sale was invalid in that Bobotyana had not been possessed of a mandate to sell the property.
52. At that meeting, Bobotyana acknowledged that the sale was not valid and undertook to refund the entire purchase price by no later than 2 September 2016.
53. Bobotyana indicated to Bester that the monies were held in his trust account and the arrangement was that the monies would be transferred into the trust account of Bowes McDougall Incorporated. The reason for this delay, so Bobotyana said, was that the monies were allegedly held in the trust account by way of a thirty-two day notice interest bearing deposit.
54. This agreement was confirmed in a letter transmitted by Bester on or about 5 August 2016 in terms of which he recorded as follows:

ESTATE LATE NGQONDI MASIMINI

ERF 58 LADY FRERE

We refer to the above matter and wish to confirm our consultation on Monday, 1 August 2016.

You advised us that you are not going to proceed any further in this matter and that you will pay the full purchase price received by yourself from our client, together with interest over to our Trust Account, particulars of which are already in your possession,

within 32 (thirty two) days from 1 August 2016.

We trust that the above is a true reflection of our consultation and we look forward to receiving payment of the R2 176 000 (Two million one hundred and seventy six thousand rand), together with interest into our Trust account, by no later than close of business on the 2nd of September 2016.”

55. Bobotyana however had no intention of refunding the monies and he reneged on his undertaking without explanation.
56. The actual position is that Bobotyana lied to Bester when he informed him that the monies were still in his trust account and that it was his intention to repay the monies to Muhammad. Bobotyana in fact continued to misappropriate the monies entrusted to him by Muhammad after the meeting on 1 August 2016 until the final withdrawal from the trust account at the end of August
2016. The ruse about having to wait until 2 September 2016 was yet another fabrication put up so as to give Bobotyana the opportunity to complete his theft of all of Muhammad’s monies.
57. On 9 September 2016 Muhammad engaged the SAPS requesting assistance as he feared that the Bobotyana had stolen the monies which he paid over to him.
58. The SAPS subpoenaed, as part of its investigation, the relevant trust account statements of Bobotyana and these formed part of the application to have his name struck of the roll.
59. Bobotyana has been charged criminally with theft and fraud. In response to questions by the Court, it was informed that the criminal proceedings are still pending and that Bobotyana has yet to plead to the criminal charges which have been preferred against him.
60. Before turning to the three stage enquiry referred to above, it is fitting to make an observation about the conduct of Bester whose conduct stands in stark contrast to that of Bobotyana. Bester is to be commended for the manner in which he not only sought to protect Muhammad from the unscrupulous conduct of Bobotyana and to assist Muhammad in recovering the monies which Bobotyana had stolen from him, but also for the lengths to which he was prepared to go to protect the public from Bobotyana which efforts included the laying of a comprehensive formal complaint with the Law Society without which the current application may not have been brought. He is an example of how an attorney should conduct himself, namely with integrity and in a manner which engenders the confidence and faith of the public in the legal profession. One can only hope that his conduct went a little way to restoring the faith of Muhammad in the legal profession.

STAGE ONE: WHETHER THE ALLEGED OFFENDING CONDUCT HAS BEEN ESTABLISHED ON A PREPONDERANCE OF PROBABILITIES

Principles applicable to the evaluation of the evidence

61. In evaluating the evidence in an application of this nature, the Court is not constrained by conventional rules of evidence.
62. As stated in *Van den Berg v General Council of the Bar of SA*, the position is as follows:
“Proceedings to discipline a practitioner are generally commenced on notice of motion but the ordinary approach as outlined in Plascon-Evans is not appropriate to applications of that kind. The applicant’s role in bringing such proceedings is not that of an ordinary adversarial litigant but rather to bring evidence of a practitioner’s misconduct to the attention of the court, in the interests of the court, the profession and the public at large, to enable a court to exercise its disciplinary powers. It will not always be possible for a court to properly fulfil its disciplinary function if it confines its enquiry to admitted facts as it would ordinarily do in motion proceedings and it will often find it necessary to properly establish the facts...”[15]
63. There is also no room for an attorney to adopt an obstructive approach. A respondent attorney has a duty to co-operate and to be completely transparent by furnishing the Court with all the necessary information so that the full facts are placed before the Court to enable it to make a correct and just decision[16].

Analysis

of the facts

64. The admitted facts reveal how Bobotyana systematically plundered his trust account in what can properly be described as an exercise in naked theft and fraud.
65. What Bobotyana did was to embark upon a fraudulent stratagem in terms of which he misrepresented to Muhammad that the monies paid to him by Muhammad would be utilized for the purchase of the property when, all along, it was his intention to steal the monies.
66. The undisputed facts establish that in March and April 2016, Muhammad paid a total of R2 176 000 into Bobotyana’s trust account, that Bobotyana was the only person with control of the trust account and that, as of 31 August 2016, the balance of the trust account was R81.86. The irresistible inference to be drawn is that Bobotyana misappropriated the money which Muhammad had entrusted to him.
67. For the sake of completeness, it may be observed that not only was Bobotyana guilty, on a balance of probabilities, of the offences of theft and fraud but, in committing these offences, he demonstrated a complete disregard for the prescripts which govern the handling of trust monies.

68. In terms of the Rules of the Law Society (which were applicable at the time that the misconduct was committed) under the heading of “Accounting Requirements – Trust Account Transactions”, the following is stipulated:

“13.13 A firm shall ensure that -

.....

13.13.7 withdrawals from its trust banking account are made only -

13.13.7.1 to or for a trust creditor, or

13.13.7.2 as transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm;

.....”

69. In this matter the transfers from and/or the withdrawals out of the trust account were made neither to trust creditors nor to the business account. Rather, in flagrant breach of the ethical rules which bound him the transfers were made by Bobotyana directly to various beneficiaries of his choosing.

The Opposition to the Application

70. As recorded above, Bobotyana has not in any meaningful way denied the central allegation that he committed widescale misappropriation of trust funds. In fact, Bobotyana has not dealt with a single one of the more than seventy transactions each of which constituted a separate act of theft.
71. His failure to do so is revealing. Leaving aside the higher duty resting on him to furnish the Court with all relevant facts and information, it is trite that it is the dishonest litigant who will present as narrow a front as possible for fear of detection or contradiction whereas it is the innocent litigant who will not hesitate to provide a detailed version for consideration.
72. The Court struggled to discern or identify the grounds of opposition to the application.
73. Firstly, it appears that Bobotyana may have, through his repeated references to pending criminal proceedings, initially sought to argue that the application could not proceed until his criminal proceedings had been disposed of.
74. This strategy was abandoned in the light of the comments by Plasket J[17] when he adjudicated on the interdict application and where the Learned Judge stated as follows:

“...His reason appears to be that he believes that he may prejudice his defence in the criminal trial if he discloses his version in these proceedings. In Law Society of the Cape of Good Hope v Randell,[18] a case concerning an application for the stay of a striking-off application pending the completion of a criminal trial, the court held that in these circumstances a party has a choice to make between disclosing his or her defence and exercising his or her right to silence; but, in the absence of an element of state compulsion, the party had to choose and to suffer the consequences of the choice. In this

instance, as in Randell, I cannot see what prejudice the respondent would be exposed to if he answered the allegations because his version is that he has done nothing wrong..."

75. Secondly Bobotyana studiously avoided tackling the very serious allegations of fraud and theft and chose instead to endeavour to coax the Court to focus on his conduct insofar as it related to the irregular conclusion of the deed of sale explaining to the Court that he was merely negligent in this regard. The tactic of Bobotyana was to concede guilt in respect of lesser misconduct in the apparent hope, it would seem, that this would influence the Court to overlook the more serious misconduct.
76. Thirdly, Bobotyana repeated the refrain, without amplification or substantiation, that he was "a fit and proper person". The Court has two difficulties with this approach. The first is that an assertion, in the absence of any factual evidence underpinning it, does not constitute a fact and is in truth irrelevant[19]. The second is that in matters of this nature, it is expected from an officer of the Court against whom such serious allegations have been made to be forthcoming and transparent and to provide a full and proper explanation so as to enable the Court to assess his or her motives and conduct. Given his admitted misconduct, his assertion that he was a fit and proper person is neither genuine nor bona fide.

STAGE TWO: IS BOBOTYANA A FIT AND PROPER PERSON TO CONTINUE PRACTISING AS AN ATTORNEY?

77. It has been demonstrated that Bobotyana has made himself guilty of widescale misappropriation of trust funds. The gravity of such conduct speaks for itself.
78. His conduct, which was both calculated and persistent, was riven with dishonesty throughout. It was conduct repugnant to the due and faithful discharge of his mandate as an attorney.
79. What makes the conduct of Bobotyana all the more outrageous is that he was set on defrauding Muhammad of his last cent when it came to the purchase price, he having insisted that the final amount of R837 450.00 be paid to him before he would cooperate in respect of the transfer of the property whilst, unbeknownst to Muhammad and Bester, he was, at the time when the demand for the R837 450.00 was made, deep into the exercise of dissipating the funds already received from Muhammad and was of the mind to do the same in respect of the R837 450.00 which he misrepresented would guarantee Muhammad ownership of the property.
80. This was conduct of an attorney with no honour left and it should not be required of any member of the public to have to place trust and confidence in an attorney who conducts himself in such a criminal manner.
81. The numerous incidences of misappropriation of these trust funds amply justify the conclusion that Bobotyana is not a fit and proper person to continue practising as an attorney.

STAGE THREE: IS STRIKING OFF THE APPROPRIATE SANCTION?

82. The Court now turns to the third stage of the enquiry, namely whether Bobotyana should be struck from the roll of attorneys or whether an order suspending him from practice or any other sanction would be appropriate.
83. It is trite that a removal from the roll does not automatically follow a finding that the offending attorney is not a fit and proper person to practise as an attorney. The Court must exercise a discretion in imposing the appropriate sanction. If the Court is of the view that after a period of suspension the person will be fit and proper, the appropriate order ordinarily would be of suspension given the far-reaching consequences of removing an attorney from the roll. Before imposing a penalty of striking off, the Court must be satisfied that the lesser penalty of suspension will not adequately give effect to objectives of the Court's disciplinary powers over attorneys. At the end of the day, each case is to be judged on its own facts[20].
84. However where an attorney has been found to have acted dishonestly a Court will not lightly conclude that striking off is not a fitting sanction. The correct position was summarised by Nicholls JA as follows:

"... It is only in exceptional circumstances that a Court will order a suspension instead of striking off where dishonesty has been

established."[21]

85. It has further been held that a person who has been found to be not fit and proper to practise carries an evidential burden to demonstrate that his name should not be struck from the roll:

"[49] Moreover, in order for the court to properly exercise its discretion, there is an evidential burden at least (for present

purposes I put it no higher than that) for an attorney shown to be not fit and proper to practise, to place evidence before court to demonstrate why it would be appropriate that he or she be suspended rather than struck off. By reason of the sui generis nature of the proceedings, this would require a full and frank disclosure of all material information so as to allow the court to make a proper and informed decision. There is no room for an attorney who wishes to remain on the roll to be coy about material facts in a matter of this nature. As officers of the court, attorneys are at all times expected to be scrupulously honest and observe the utmost good faith in their dealings with the court[22], even if it means disclosing information which may be adverse to their own interests, and this rule applies equally in applications to strike them off."[23]

Gravity of the offence

86. The undisputed facts demonstrate that Bobotyana has acted in a dishonest and unscrupulous manner throughout his dealings with Muhammad and indeed throughout his dealings with his colleague, Bester. He lied to Muhammad that he was authorised to sell the property and then, on the back of that lie, induced Muhammad to pay him R2 176 000.00. He then stole those monies.

Lack of remorse

87. Bobotyana has not demonstrated an iota of remorse.
88. Rather he has chosen to cynically persist with the contention that he is a fit and proper person. In the face of damning evidence, Bobotyana's attempt to exonerate himself by way of his refrain that he was nonetheless a fit and proper person exposes a lack of insight into what an attorney's obligations are as the custodians of trust funds.
89. Before each and every incident of theft, Bobotyana had an opportunity to review and reconsider his conduct. He proceeded undeterred. He was bent on defrauding Muhammad at every turn and to the greatest possible extent.
90. Acknowledgement of wrongdoing is the first step towards rehabilitation. When an officer of the Court refuses to demonstrate any acceptance of wrongdoing, does not recommit to the values which the legal profession upholds, indicates no degree whatever of remorse, makes no move to correct what he has done, then his own conduct undercuts the applicability of corrective or progressive discipline by the Court. In such a case the risk of allowing him to continue to practise is unacceptably great.
91. Not only did Bobotyana fail to demonstrate any remorse but he sought to deflect attention away from his misconduct by taking spurious technical points (such as questioning whether the oath had properly been administered to Ms Myburgh) and the issuing of rule 35(12) notices purely for the purpose of delay causing the Court, in the interdict proceedings, to comment as follows:

"[13] From the facts that I have set out, we were of the view that the most probable inference to be drawn was that the service of the notice was nothing but a mala fide abuse of process intended as a delaying tactic. In these circumstances, we treated the respondent's submissions as an application for a postponement and dismissed it with costs."[24]

92. This approach, read together with the circumstance that Bobotyana was less than forthcoming in his answering affidavit, does not leave a good impression.
93. In fairness to Mr Ntlokwana, he did not pursue any of the technical points raised by Bobotyana with any vigour save to record that he did not have instructions to abandon these points. He certainly did not make himself a party to the obstructive approach advanced in the answering affidavit.

Conduct before this Court

94. The Court must unfortunately comment on the truthfulness of the allegations made by Bobotyana before the Court.
95. An elementary comparison between the affidavit to which he deposed in opposition to the interdict proceedings referred to above and the affidavit which he deposed in opposition to the striking off application reveals material inconsistencies.
96. He denied knowledge and/or receipt of the complaint in these proceedings despite admitting having received it in the interdict proceedings. He alleged no knowledge of the termination of his mandate in these proceedings. He however attached the termination of his mandate to his affidavit in the interdict proceedings. He denied knowledge of correspondence, and requested proof of service, in circumstances where he had replied to the correspondence.
97. When it comes to an attorney misleading the Court, in *Law Society of the Free State v Le Roux*[25] it was held as follows:

“The Law Society correctly pointed out that the first respondent made conflicting statements. Courts take a very dim view of a deponent

that misleads the court. Worse still, if the deponent in question is an attorney, for an attorney is an officer of the court and has a responsibility to disclose true facts to a court. An attorney who has no qualms in presenting an untruthful account of events to a court under oath has no integrity and is simply not fit and proper to practise as one. If deceit had to be graded according to degrees that would count amongst the worst forms of deceit.”

98. Bobotyana’s conduct in the application as well as his failure to make a full and frank disclosure to the Court and indeed his conduct of misleading the Court, is indicative of the fact that he is not a fit and proper person to be an attorney of the Court. It is yet another reason as to why his name falls to be struck from the roll of attorneys.

A further aggravating factor

99. It is necessary to mention that Bobotyana has, subsequent to the granting of the interdict which lapsed, been found by a Court to have acted unprofessionally.
100. In *Ntloko v Bobotyana*[26] the facts were that after Bobotyana’s client, one Ntloko, was paid an amount of R650 000.00 by the Road Accident Fund in settlement of his claim (the monies were again paid into Bobotyana’s trust account), he then transferred to Ntloko the meagre amount of R10 000.00 and kept for himself an amount of R640 00.00. He refused to render an itemised bill of costs to Ntloko.
101. In the result the Court ordered him to render such an account and to pay the costs of Ntloko on an attorney and client scale, affording Ntloko leave to amend his notice of motion and to supplement his papers after receipt of the itemised bill. Again Bobotyana was trenchantly criticized by the Court for raising spurious technical arguments.

102. In the light of such conduct and in a nation beset by corruption and greed, it is well to be reminded of the words of Judge Rogers[27] that legal practitioners are privileged to be part of an honourable profession and should lead by example and should distinguish

themselves by their “absence, not [their] presence, at [the] feeding trough”[28].

103. Such conduct as committed by Bobotyana serves only to confirm the conclusion of this Court that he has no interest in reforming.

Application of the law to the facts

104. An attorney that dishonestly misappropriates trust funds to himself or for his own benefit is not a fit and proper person to continue

practising as an attorney and deserves the ultimate sanction of a strike-off.[29]

105. In *Summerley v Law Society, Northern Provinces*[30] the Supreme Court of Appeal stated as follows:

“The further argument on behalf of the appellant was that, as a general rule, striking-off is reserved for attorneys who have acted

dishonestly while transgressions not involving dishonesty are usually visited with the lesser penalty of suspension from practice. Although this can obviously not be regarded as a rule of the Medes and the Persians, since every case must ultimately be decided on its own facts, the general approach contended for by the appellant does appear to be supported by authority (see eg *A v Law Society of the Cape of Good Hope* 1989 (1) SA 849 (A); *Reyneke v Wetsgenootskap van die Kaap die Goeie Hoop* [1993] ZASCA 161; 1994 (1) SA 359 (A); *Law Society of the Cape of Good Hope v King* 1995 (2) SA 887 (C) at 892G-894C; *Vassen v Law Society of the Cape of Good Hope* [1998] ZASCA 47; 1998 (4) SA 532 (SCA) at 538I-539A; *Law Society, Cape of Good Hope v Peter* [2006] SCA 37 (RSA) para 19). This distinction is not difficult to understand. The attorney’s profession is an honourable profession, which demands complete honesty and integrity from its members. In consequence, dishonesty is generally regarded as excluding the lesser stricture of suspension from practice, while the same can usually not be said of contraventions of a different kind.”

106. The Court finds no basis to deviate from the general rule that an attorney who has been shown to be dishonest should be struck from the roll of attorneys particularly where, as in the present matter, the dishonesty was gross.

CONTENT OF THE ORDER

107. The Court was informed by Ms Watt that this application was the first such application brought in terms of the LPA. It is accordingly necessary to say something about the content of the order because the standard orders which were previously issued when these types of applications were brought in terms of the Attorneys Act will have to be amended.

108. The Court raised with Ms Watt as to why the order which was handed up by the LPA made reference to various sections in the Attorneys Act and in particular why it was recorded that the application was brought in terms of section 22(d) of the Attorneys Act.
109. Her response was that section 116(2) of the LPA found application because the matter concerned proceedings which had been instituted in terms of any law repealed by the LPA (the Attorneys Act) and accordingly must be continued and concluded as if the Attorneys Act had not been repealed. Accordingly Ms Watt submitted that it was appropriate to compile what she termed a “hybrid” draft order where reference were made both to the LPA and the Attorneys Act for the consideration by the Court.
110. In the view of the Court the submission that section 116(2) finds application is not correct. Whilst it may be so that the internal

investigation of the Law Society and indeed the interdict proceedings were instituted before 1 November 2018[31], the current proceedings, which are not in any way dependent on earlier enquiries / proceedings, are fresh proceedings and they were instituted after 1 November 2018 and it is accordingly an application properly brought in terms of the LPA.

111. A notice of motion in applications of this nature should take into account the following:

111.1. Applications of this nature will no longer be brought in terms of the Attorneys Act and accordingly it will not be appropriate for there to be references to section 22(d) of the Attorneys Act. Such references will have to be replaced by the appropriate references to the LPA including sections 31(1)(a) read with section 44(1) and 44(2).

111.2. The Attorneys Fidelity Fund as established by section 25 of the Attorneys Act has been replaced by the Legal Practitioners Fidelity Fund as established in terms of section 61 of the LPA and accordingly references should be made to the Legal Practitioners Fidelity Fund.

111.3 Allied to the above, it will henceforth no longer be appropriate to refer to the “Board of Control” as established in terms of section 27 of the Attorneys Act as the LPA has established the “Legal Practitioners Fidelity Fund Board” in terms of section 61 of the LPA as the body which manages the Legal Practitioners Fidelity Fund[32].

111.4 When it comes to trust funds, whilst it may still be appropriate to refer to monies invested in terms of section 78(1), (2) and (2A) of the Attorneys Act, there should be a reference to the appropriate sections in the LPA, namely sections 86(2), (3) and (4) in the light of the circumstance that as of 1 November 2018 those sections became applicable.

111.5 When it comes to persons who suffered pecuniary loss at the hands of legal practitioners, the reference to section 26 of the Attorneys Act should be replaced with a reference to section 55 of the LPA which in substance mirrors the previous section.

111.6 When it comes to the appointment of a curator reference must be made to section 90 of the LPA and the order accordingly properly formulated in terms thereof.

COSTS

112. It is customary in such matters that the Applicant be indemnified from costs because it is not an ordinary litigant, but is fulfilling a public duty by bringing the conduct of a legal practitioner to the attention of the Court so that the Court can exercise its supervisory functions over its officers.
113. Costs should usually be ordered on an attorney and client scale, particularly where there has been dishonesty in the litigation.[33]
114. The awarding of costs on an attorney and client scale is accordingly appropriate in the circumstances.

THE FOLLOWING ORDER IS ISSUED:

1. The Respondent's name is struck from the roll of attorneys.
2. The Applicant is directed to cancel the enrolment of the Respondent as an attorney as envisaged in Section 31(1)(a) of the Legal Practice Act 28 of 2014 ("the LPA").
3. The Respondent shall surrender and deliver to the Registrar of the Court his certificate of enrolment as an attorney.
4. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order within 2 (TWO) weeks from date hereof, the Sheriff for the District in which such certificate of enrolment is, shall be empowered and directed to take possession of and deliver the same to the Registrar of the Court.
5. The Respondent shall deliver his books of account, records, files and documents containing particulars and information relevant to:

5.1 any moneys received, held or paid by the Respondent from or on account of any person;

5.2 any moneys invested by the Respondent in terms of section 78(1), 78(2) and/or section 78(2A) of Act No. 53 of 1979 and section 86(2), 86(3) and section 86(4) of the LPA;

5.3 any interest or moneys so invested which was paid over or credited to the Respondent;

5.4 any estate of a deceased person, or any insolvent estate, or any estate placed under curatorship of which the Respondent is the executor, trustee or curator or which the Respondent is administering on behalf of the executor, trustee or curator of such estate; and

5.5 the Respondent's practice as an Attorney;

to the curator appointed hereunder, provided that as far as such books of account, records, files and documents are concerned, the Respondent shall be entitled to have access to them, but always subject to the supervision of such curator or a nominee of such curator and provided that such curator shall be and is authorized and directed to release such books of account, records, files and documents upon production to him of the certificate referred to in paragraph 3 above.

6. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order within 1 (ONE) week after service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the Respondent, as the case may be, the Sheriff for the district in which such books of account, records, files and documents are, be empowered to take possession of and deliver them to such curator.
7. The curator is entitled and is directed to:
 - 7.1 hand over to the persons entitled thereto all such records, files and documents;
 - 7.2 hand over all such records, files and documents over which the Respondent exercised a lien to the persons entitled thereto as soon as he has satisfied himself that the fees and disbursements in connection therewith, if any, have been paid or secured , or in the event of any dispute as to the provision of security, in his discretion.
8. A written undertaking by a person to whom the records, files and documents referred to in paragraph 5 above are handed to pay such amount as may be due to the Respondent, either on taxation or by agreement, shall be deemed to be satisfactory security for the purposes of the preceding paragraph hereof provided that such written undertaking incorporates a domicilium citandi et executandi of such person.
9. Such curator is authorised and directed to require that any such file, the contents of which he may consider to be relevant to a claim, or possible or anticipated claim, against him and/or the Respondent and/or the Respondent's clients and/or the Legal Practitioners Fidelity Fund (hereinafter referred to as "The Fund") in respect of money and/or other property entrusted to the Respondent, be re-delivered to such curator.
10. The Respondent be interdicted and prohibited from operating on his trust account(s).
11. The Director, failing whom, the Acting Director, failing whom, the Deputy Director, failing whom, the Acting Deputy Director, failing whom, the Assistant Director, failing whom, the Acting Assistant Director for the time being of the Applicant, is appointed as curator to administer and control the trust account of the Respondent comprising the separate banking accounts opened and kept by the Respondent at a bank in terms of Section 86(2) of the LPA and/or any separate savings or interest-bearing accounts as contemplated by Section 86(3) and/or 86(4) of the LPA, in which money from such trust banking accounts have been invested by virtue of the provisions of the said subsection/s or in which moneys in any manner have been deposited or credited (the said account(s)) being herein referred to as "trust account(s)", with the following powers and duties:

11.1 subject to the approval of the Legal Practitioners' Fidelity Fund Board (hereinafter referred to as "the Board") , to sign and endorse cheques and/or withdrawal 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;

11.2 subject to the approval and control of the Board , 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 money held, received and/or invested by the Respondent in terms of section 78(1), 78(2) and/or section 78(2A) of Act No. 53 of 1979 and sections 86(2), 86(3) and 86(4) of the LPA (hereinafter referred to as "trust moneys"), to take legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions in which the Respondent may have been concerned and which may have been wrongfully and unlawfully paid from the trust account(s) and to receive such moneys and to pay the same to the credit of the trust account(s);

11.3 to ascertain from the Respondent's books of account the names of all persons on whose account the Respondent appears to hold or to have received trust moneys (hereinafter referred to as "trust creditors") and to call upon the Respondent to furnish him, within 30 (THIRTY) days of the date of this Order or such further period as he may agree to in writing, with the names, addresses of and amounts due to all trust creditors;

11.4 to call upon such trust creditors to furnish such proof, information and affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of the Board, to determine whether any such trust creditor has a claim in respect of money in the trust account(s) and, if so, the amount of such claim;

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

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

11.7 in the event of there being any surplus in the trust account(s) after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce, as the case may be, firstly, any claim of the Fund in terms of Section 86(5)(a) 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 as envisaged in 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 such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Board, to the Respondent, if he is solvent, or, if the Respondent is insolvent, to the trustee(s) of the Respondent's insolvent estate;

11.8 in the event of there being insufficient moneys in the trust banking account(s) opened by the Respondent as referred to above from which to pay the claims of trust creditors in full and after taking reasonable steps to ascertain the identities of such creditors and the amounts due to them to distribute pro rata amongst creditors whose claims have been proved or admitted, the amount(s) reflected by the credit balance(s) in said account(s) provided that the curator shall pay to trust creditors whose funds are held in separate accounts in terms of section 86(2) and/or 86(3) and/or 86(4) of the LPA who satisfy him that they are entitled to such funds, the amounts due to such creditors;

11.8.1 subject to the approval of the Board, to close the trust account(s) and pay the credit balance(s) to the Fund and to require the credit balance(s) to be placed to the credit of a special trust suspense account in the name of the Respondent in the Fund's books;

11.8.2 to refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the LPA;

11.8.3 to authorise the Board to credit the credit balance(s) referred to in 11.8.1 above to its "Paid Claims Account" when the Fund has paid, in terms of Section 55 of the LPA, admitted claims of the trust creditors in excess of such credit balance(s), provided that, notwithstanding the foregoing, the said Board shall be entitled, in its discretion, to transfer to its "Paid Claims Account" the amount of moneys of any claim or claims as and when admitted and paid by it;

11.9 subject to the approval of the Chairman of the Board, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys and/or counsel, and/or accountants and/or other persons, where considered necessary, to assist such curator in carrying out the duties of curator; and to render from time to time, as curator, returns to the Board showing how the trust account(s) has (have) been dealt with, until such time as the said Board notifies him that he may regard his duties as terminated.

12. The Respondent is directed to :

12.1 to pay the fees and expenses of the curator, such fees to be assessed at the rate of R850.00 per hour, including travelling time;

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

12.3 to pay the costs of and incidental to this application on a scale as between an attorney and client;

12.4 within 1 (ONE) year of him having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, to 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.

P N KROON

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

I agree,

NG BESHE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

Appearances:

For Applicant: Adv Watt instructed by NN Dullabh & Co.

For Respondent: Adv Ntlokwana instructed by Mqeke Attorneys

[1] General Council of the Bar of South Africa v Geach & Others 2013

(2) SA 52 (SCA) at paragraph 87.

[2] Law Society of the Cape of Good Hope v Bobotyana (2970/2017)

[2018] ZAECGHC 93 (2 October 2018)

[3] Section 5(c) of the LPA

[4] Section 5(d) of the LPA

[5] Section 5(f) of the LPA

[6] Section 6(3) of the LPA

[7] Section 6(1)(b)(iii) of the LPA

[8] Section 6(1)(v) of the LPA

[9] Mzingaye Lewinthol Gqomo v The Law Society of the Cape of Good Hope (688/2016) [2020] ZAECGHC 81 (4 August 2020)

[10] Section 24(2)(c) of the LPA

[11] Section 31(1)(a) read with sections 44(1) and 44(2) of the LPA. In Law Society of the Free State v Schroeder (4543/2018) [2019] ZAFSHC 229 (29 November 2019) the Court stated as follows at paragraph [12]: “In Chapter 4 the LPA provides in detail for disciplinary procedures against legal practitioners accused of misconduct. The powers of the High Court are confirmed in s 44, but the wording of s 22 of the previous Act is not repeated. However the court’s authority cannot be doubted.”

[11] Section 31(1)(a) read with sections 44(1) and 44(2) of the LPA. In *Law Society of the Free State v Schroeder* (4543/2018) [2019] ZAFSHC 229 (29 November 2019) the Court stated as follows at paragraph [12]:

“In Chapter 4 the LPA provides in detail for disciplinary procedures against legal practitioners accused of misconduct. The powers of the High Court are confirmed in s 44, but the wording of s 22 of the previous Act is not repeated. However the court’s authority cannot be doubted.”

[12] *Botha v Law Society, Northern Provinces* 2009 (1) SA 227 (SCA) at paragraph 2; *Malan and Another v Law Society of the Northern Provinces* 2009 (1) SA 216 (SCA) at paragraph 4

[13] It is unclear from the papers as to why over and above the purchase price of R2 150 000.00 a further R26 000.00 was paid to Bobotyana by Muhammad.

[14] *Hewetson v Law Society of the Free State* [2020] 3 All SA 15 (SCA) at paragraph 67. *Kudo v Cape Law Society* 1977 (4) SA 659 (A) at 668E-F

[15] *Van den Berg v General Council of the Bar of SA*

[2007] 2 All SA 499 (SCA) at [2]; see also *Olivier v Die Kaapse Balieraad* 1972

(3) SA 485 (A) at 496F-G where it was held that the test for establishing facts is that of a balance of probabilities.

[16] *Hewetson v Law Society of the Free State* at para [44]

[17] *Law Society of the Cape of Good Hope v Bobotyana* (supra) at paragraph [20].

[18] *Law Society of the Cape of Good Hope v Randell* 2013

(3) SA 437 (SCA)

[19] *Hülse-Reutter and Others v Gödde* [2002] 2 All SA 211 (A) at para [14]

[20] *Hewetson v Law Society of the Free State* at para [6]

[21] *Hewetson v Law Society of the Free State* at para [29]

[22] *Eg Incorporated Law Society, Transvaal v Meyer* 1981 (3) SA 962 (T) at 970F [also reported at [1981] 4 All SA 350 (T) – Ed] and *Society of Advocates, Natal v Merret* 1997 (4) SA 374 (N) at 382J–383H [also reported at [1997] 2 All SA 273 (N)].

[23] *Hewetson v Law Society of the Free State* at para [49]

[24] *Law Society of the Cape of Good Hope v Bobotyana* supra

[25] (3039/2014)

[2015] ZAFSHC 233 (30 November 2015). The duty of a legal practitioner not to mislead the Court was recently discussed at length in the matter of *Mzayiya v Road Accident Fund* (480/2020) [2020] ZAECCELLC 15 (17 September 2020). See in particular paragraphs [83] to [93].

[26] (EL18/2019)

[2019] ZAECCELLC 22 (23 August 2019)

[27] Before his elevation to the Bench.

[28] High Fees and Questionable Practices as published in The Advocate in April 2012 at page 40

[29] Law Society of the Free State v Le Roux and Others (3039/2014) [2015] ZAFSHC 233 (30 November 2015)

[30] 2006

(5) SA 613 (SCA) at para 21

[31] On 29 October 2018 in Government Gazette No. 42003, containing proclamation no. 31 of 2018, it was proclaimed that on 31 October

2018 chapter 2 of the LPA, save for section 14, would come into operation and that on 1 November 2018 the remainder of the

provisions of the LPA would come into operation

[32] It may be noted however that section 53(1) of the LPA provides that despite the provisions of section 119, the Attorneys Fidelity Fund continues to exist as a juristic person under the name of the Legal Practitioners Fidelity Fund which the court interprets to mean that the entity does not change but rather that it has simply been given a new name.

[33] Botha v Law Society, Northern Provinces [2008] ZASCA 106; 2009

(1) SA 227 (SCA) at 236F; Law Society, Northern Provinces v Mogami and Others 2010

(1) SA 186 (SCA) at paragraph [31] and Ex parte Mdyogolo 2017 (1) SA 432 (ECG) at paragraph [39]

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