

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Etsebeth (66994/19) [2020] ZAGPPHC 325 (23 April 2020) [2020] ZAGPPHC 325

COURT

North Gauteng High Court, Pretoria

BEFORE

BAM, PD PHAHLANE

CASE / FILE NUMBER

66994/19

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NUMBER: 66994/19

In

the matter of :

THE
SOUTH AFRICAN LEGAL PRACTICE COUNCIL
Applicant
and
LEON
ETSEBETH
Respondent

JUDGMENT

BAM, J

1. The respondent was admitted and enrolled as an attorney of this Court on 12 January 1982. He practiced as a partner in several firms of attorneys before starting to practice on his own on 1 June 1989, under the name and style of Locketts Attorneys.

2. On 10 September 2019 the applicant, on an urgent basis, applied for an interim order to suspend the respondent from practising as an attorney, pending the outcome of the application to remove him permanently from the role of attorneys.
3. The respondent filed his Notice to Oppose on 12 September 2019. He was represented by De Witt Martens attorneys.
4. On 8 October 2019, despite the respondent's opposition of the application, the Court granted an interim order suspending the respondent, and issued a rule nisi calling upon the respondent to show cause on 23 April 2020 (today) why his name should not be removed from the roll of practitioners. The respondent was ordered to file his answering affidavit on or before 4 November 2019.
5. On 11 October 2019 the notice of set down for 23 April 2020 was served on the respondent's attorneys of record.
6. The respondent failed to file his answering affidavit. Neither were heads of argument filed by the respondent.
7. It is contended by the applicant that the respondent has contravened numerous provisions of the Legal Practice Act, The Code of Conduct and the LPC rules. In this regard heed is taken of the contents of the facts recorded by the applicant and the comprehensive heads of argument drafted by Mr Magardie, representing the applicant.
8. The allegations made by the applicant about the complained about conduct of the respondent, referred to above, went unanswered.
9. The applicant now applicant for the confirmation of the interim order granted on 8 October 2019 to strike the respondent's names from the roll of attorneys.
10. The applicant's investigation of the respondent's financial affairs showed a Trust deficit of R3 191 917, 54.
11. A summary of the respondent's financial situation, inter alia, includes the following:
 - (i) Complaint Mr R du Plessis: The respondent failed to administrate the deceased estate of the late Ms R due Plessis in accordance with his instructions. The respondent then failed to answer to correspondents directed to him in the regard.
 - (ii) Complaint Mr P du Plessis. It turned upon the same deceased estate as in (i) above. In this instant the complaint was that the complainant and his siblings did not receive the inheritance what was due to them. All calls and correspondence directed to respondent wet unanswered.
 - (iii) Complaint Mr PB Erasmus. This matter turned upon the registration of immovable property. The payment disappeared from the respondent's Trust account. The respondent failed to answer any correspondence.

12. In addition (we do not deem it necessary to refer to further detail) there were several other complaints concerning Trust money of which enquiries were also ignored by the respondent.
13. Investigation of the respondent's affairs and financial record by Mr D Swart, a chartered accountant, as mentioned above, revealed a possible Trust shortage of R3 191 917, 54. Mr Swart, in referring to the factual situation detailed in his report, dated 1 July 2019, concluded as follows:

"Based on my instructions from the Legal Practice Counsel and arising out of my findings and comments set out previously, I am of the opinion that the firm Locketts Attorney's has contravened the provisions of the Act and/or the Rules as set out hereunder:

7.1.1. Rule 47.1 of the Rules in that the practitioner failed to reply, within a reasonable time, to all communications which require answer as set out in paragraph 3.8 above.

7.1.2. Rule 35.11 of the Rules in that the firm did not, within a reasonable time after the performance or earlier termination of any mandate, account to his client in writing as set out in paragraph 4.2 above.

7.1.3. Rule 35.12 of the Rules in that the firm did not, unless otherwise instructed, pay any amount due to a client within a reasonable time as set out in paragraph 4.3 above.

7.1.4. Section 86(2) of the Act read together with Rule 35.13.8 of the Rules in that the firm did not ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in his accounting records as set out in paragraph 6.4 above.

7.1.5. Rule 35.13.10 of the Rule in that the firm did not immediately report in writing to Legal Practice Council should the total amount of money in its trust bank accounts and money held as trust cash be less than the total amount of the credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reason for the debit and proof of rectification as set out in paragraph 6.5 above"

14. In addition to Mr Swart's conclusion, Mr Magardie, in his heads of argument, referred to numerous sections of Legal Practise Act and the Rules contravened by the respondent. Without referring to detail, it suffices to say that the contraventions of the respondent listed by Mr Magardie, all of them substantiated and forming part of the investigation, create a bleak image of the respondent's conduct as an attorney.
15. It is not surprising that the respondent did not file an answering affidavit and that he remained in default.
16. The offending conduct has been clearly established.
17. The respondent is not a fit and proper person to practice as an attorney and his name should be struck from the roll.

18. The draft order sufficiently addresses all relevant issues and is made an order of court. It is marked “X”.

JUDGE OF THE HIGH COURT

AJ BAM

ACTING JUDGE OF THE HIGH COURT

PD PHAHLANE

23 APRIL 2020

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