

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Halles and Another (35117/2022) [2024] ZAGPPHC 624 (5 June 2024)

[2024] ZAGPPHC 624

COURT

North Gauteng High Court, Pretoria

BEFORE

R Matthys, N Davis, O Mooki

CASE / FILE NUMBER

35117/2022

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FLYNOTES:

PROFESSION

– Striking off – Mental health impairment – Appropriate sanction – Major depressive disorder – Expert opinion – Impairment which rendered practitioner not currently fit to practice might be of temporary nature – Full recovery possible through guidance and balanced lifestyle – Did not commit any acts of dishonesty – Suspension, rather than striking off the more appropriate sanction under circumstances – Suspended until fit and proper person to practice.

REPUBLIC

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

CASE NO: 35117/2022

1. REPORTABLE: NO

2. OF INTEREST TO
OTHER JUDGES: NO

3. REVISED : Yes

5 June 2024

In the matter between:	THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant and JUDY MASEEISO HALLES First Respondent JOUBERT RENIER FRANCOIS INC Second Respondent
Coram:	Davis J, Mooki J and Matthys AJ
Heard:	18 April 2024
Delivered:	5 June 2024
Summary:	Application for the striking off of a legal practitioner (Attorney) from the roll. Practitioner suffering from psychological and mental health impairment and not having committed any acts of dishonesty. The impairment which rendered the practitioner not currently fit to practice might be of a temporary nature. Suspension, rather than striking off the more appropriate sanction in the circumstances. ORDER The first respondent is suspended from practice as a Legal Practitioner until she:- - Satisfies the Court that she is a fit and proper person to practice, with specific reference to her diagnosed mental health disorder; - To the satisfaction of the LPC submit all past outstanding audit reports (if any); - Completes the Practice Management Training Course, in the event that she intends to practice for her own account. - Complies with all other regulatory requirements not mentioned herein, to the satisfaction of the LPC. - No order as to costs - A copy of this judgment is to be furnished to the Chairperson of the South African Legal Practice Council by the Registrar of this Court within 5 days from date hereof, for consideration by the Council.

JUDGMENT

Matthys AJ et Davis J concurring and Mooki J dissenting

A.

INTRODUCTION

[1] A Full Court heard this matter on 18 April 2024. The South African Legal Practice Council (LPC) by application, approached the court as provided for in section 44 (1) of the Legal Practice Act[1] (LPA), to adjudicate upon the conduct of the first respondent in her capacity as a legal practitioner enrolled as an Attorney. The second respondent is a law firm in which the first respondent was a director and from which she resigned in 2020. The second respondent did not participate in these proceedings, it was erroneously cited.

[2] The application is twofold. The first part was dealt with on 20 April 2023, when an interim order was granted suspending the first

respondent from practice as a legal practitioner, pending the final determination of the second part of the application, calling on the first respondent to show cause, why her name should not be struck from the roll of legal practitioners. This judgment centres on the second part of the application, for an order striking the first respondent's name from the roll of legal practitioners. The first respondent oppose the application, as far as the sanction prayed for by the LPC is concerned.

B. FACTUAL MATRIX

[3] The following evidence is common cause. The first respondent is a 42-year-old single woman. She is the youngest of five siblings. She was raised in a close-knit conservative Christian family. She currently lives with her mother and elder sister. Her deceased father was a truck driver and her mother is a homemaker. Her parents had limited formal education, but they encouraged their children to educate themselves.

[4] The first respondent was head girl of the high school from where she matriculated in 1999. In 2003, she obtained the BSc Health Sciences degree from the University of Stellenbosch. Thereafter in 2008, she obtained the LLB degree from the University of Johannesburg. In 2012 at the age of 31 years, she served as a Candidate Attorney in the employ of AF Van Wyk Attorneys[2]. She was admitted to practice as an Attorney on 1 November 2013 and remained in the employ of AF Van Wyk Attorneys, as a professional assistant until 2018.

- [5] During 2016, whilst working as a professional assistant, her father (with whom she shared a close relationship) was diagnosed with lung cancer. At the time, she had to support her mother emotionally and she took it upon herself, to attend to her father's daily care, including transporting him to the radiology centre, where he received treatment until his death in March 2017. It is not in issue that her father's death went along with revelations of sensitive family secrets, which occasioned emotional stress to the first respondent.
- [6] In 2018, she took up the position as an Associate in the second respondent firm of Attorneys. She sat for the conveyancing examination, but failed. She then took up a directorship in the second respondent. As a director, she practised for the first time, for her own account. It was therefore required of her, to pass the compulsory Practice Management Training Course (PMTC)[3].
- [7] She passed one of three subjects towards the course during 2019 and the LPC granted her an extension to complete the remaining subjects by the end of December
2020. She was issued with a Fidelity Fund certificate for the year 2020.[4] It transpired that around mid-2020 she resigned from the second respondent and opened her own practice under the name and style Judy Maseeiso Halles Incorporated. She admits that she did not update her practice details in the LPC records, as was expected.
- [8] The first respondent's evidence went unchallenged, to the extent that she registered for the outstanding two subjects to complete the PMTC in 2021, but then aborted studying, due to a lack of motivation. She explains that since 2021 her life took a downward spiral, evidenced by the fact that she infrequently got out of bed; rarely attended to her office; moved her client files from her office to her bedroom; did the minimum work and no longer attended to her practice and regular duties as an Attorney. She also fell behind financially and had to borrow money. She states that added to the above-mentioned events, around mid-2022 and whilst she was in a state of ambivalence, she received word of this application against her by the LPC.
- [9] First respondent does not challenge the LPC's indictment against her. She concedes that she did not qualify for nor held a Fidelity Fund Certificate since 1 January 2021 until her suspension on 20 April 2023[5]. As a Fidelity Fund Certificate is mainly issued on the strength of unqualified auditors reports, the first respondent agrees that she failed to submit to the LPC her auditor's reports for the period end February 2021 to February 2023[6]. She has not completed the outstanding two subjects towards completion of the PMTC and she failed to pay her annual LPC membership fees[7].
- [10] The evidence is that in February 2023 her erstwhile employer/principal Mr AF Van Wyk referred her to a psychiatrist Dr Biagio Longano. She consulted the psychiatrist as per the contents of his report. The contents and the correctness of the psychiatrist report are not in issue[8]. Having assessed the first respondent's psychological and emotional state, the psychiatrist made the diagnosis that the first

respondent is suffering of Major Depressive Disorder. Dr Longano asserts that at his first consultation with the first respondent, the Major Depressive Disorder was self-evident. She exhibited classical features of anhedonia[9], anergia[10], low mood, a degree of impairment of executive functioning and obvious social and occupational dysfunction.

[11] He holds forth, that regard being had to the first respondent's historical background, he would not have considered her a typical candidate for a depressive illness. Nonetheless, he made the working hypothesis that she was majorly affected by her father's

premature death. He also expresses the view that the first respondent's career path seems to have deviated from its intended trajectory due to the universal career-impeding effects of the Covid-19 pandemic. He explains that as the first respondent's

depression worsened; she became more and more detached from the reality of her work and of her own financial position, to the point

of becoming bed-bound.

[12] Such detachment from reality is in the psychiatrist expert opinion, a common feature of severe depression and in extreme cases, may lead to a loss of a will to live. Dr Longano states, that if the first respondent did not seek help, but was left to her own devices, she might well have reached a critical turning point. He started the first respondent on antidepressant treatment and at the time of writing his report (dated 10 November 2023) he assessed modest improvement in her psychological condition. He is confident that the first respondent will make a full recovery and that she will be able to resume her profession in future, given guidance and a balanced lifestyle. It is his evidence that the first respondent's condition should have been brought to psychiatric attention sooner, "as much of the catastrophe could have been averted".

[13] The applicant states that despite her using the medication prescribed by Dr Longano, she continued to suffer the same depressive symptoms. She then upon advice, consulted with a Clinical and Neuropsychologist Ms Annlies Cramer on 19 October 2023[11]. Ms Cramer confirms the diagnosis made by Dr Longano as Major Depressive Disorder as per her report[12].

[14] She confirms that the diagnosis is understood in the context of a delayed reaction to the death of the first respondent's father, combined other stressors she encountered thereafter. In Ms Cramer's expert opinion, psychological regression following the death of a parent found in adulthood is a complex response to a significant loss. It is her view that generally, some degree of psychological regression may be regarded as normal, however, in the first respondent's instance; it became progressive and pathological as it severely impedes her functioning in all spheres. In this vein, the first respondent is in need of treatment, which includes pharmacotherapy[13] and psychotherapy[14].

[15] Ms Cramer proposes that regard be had to the first respondent's psychological condition when her ability to meet her responsibility

as a legal practitioner is assessed. The proposed approach is advocated especially because the first respondent does not have a

history of psychiatric illness, nor a history of disregard of rules or criminal intent, or substance abuse and/or addictive behaviour.

[16] It is not disputed that the first respondent has not done significant work since 2021 and her averment went unchallenged, to the extent that all the legal services which she rendered were performed on a "work now pay later" basis. It further transpired that counsel for the LPC during argument, abandoned their contention that the first respondent practised after she was suspended on 20 April

2023. Furthermore, the LPC has not received any complaints from clients or other members of the public, against the first respondent.

[17] The first respondent has as far possible, made efforts to remedy the infractions. She provided documentary proof that she brought her LPC membership fees up to date[15]. She once again registered for the 2024 PMTC in an endeavour to complete the outstanding two modules. It is not in issue that her client files and trust account bank details are in possession of the LPC. Although the first respondent's non-compliance for a Fidelity Fund Certificate placed her clients' interest at risks, there is no evidence on record that actual prejudice resulted. These are the most important facts upon which the matter stands to be judged. Although I summarised the evidence, I place on record that I considered the entire body of evidence to arrive at my final findings.

C. DISCUSSION

[18] In *Jasat v Natal Law Society* 2002

(2) ALL SA 310 (A) the Supreme Court of Appeal held, that a three-stage enquiry is envisaged in applications of this nature. First, the Court is required to make factual findings as to whether the alleged offending conduct has been established on a balance of probabilities. Second, decide whether in the discretion of the Court, the person concerned, is a fit and proper person to continue to practice. The exercise of this discretion, involves a weighing up of the conduct complained of, against the conduct expected of a legal practitioner. This inquiry entails a value judgment.

[19] Thirdly, the court must decide whether in all the circumstances, the name of the person in question, should be removed from the roll of legal practitioners or whether a suspension will suffice. Concerning the most appropriate sanction, based on the unique facts of the case, regard should be had to the nature of the conduct complained of; the extent to which the offending conduct reflects upon the person's character and worth to remain within the ranks of the legal profession; the likelihood of a repetition of the conduct complained of and

lastly but not the least, the protection of the public against unprofessional conduct by legal practitioners.

The offending conduct

[20] There is no lis between the parties regarding the conduct complained of by the LPC. The first respondent confessed her transgressions. She humbled herself before the court and the authority of the LPC and explained the breaches in a forthright manner. Based on the available evidence, I find that the conduct complained of has been established.

Fit and Proper Person

[21] Generally, it is expected of legal practitioners to conduct themselves with the highest degree of integrity, honor and propriety[16]. These noble demands of the legal profession are every so often, elevated above the importance of unique personal life priorities. In doing so, there is a general expectation that a practitioner's personal life, should not be allowed to interfere with professional

responsibilities.

[22] On the other hand, legal practitioners are more than anything else, human beings. The pressure demands associated with the practice of law, including the maintenance of the personae of a fit and proper person, worthy of the profession, should not be under rated.

[23] Compounded by a range of personal life stressors, which any lawyer may face, competing interests may take its toll on the physical and or mental

well-being of a practitioner[17]. I considered that stress is a subjective experience. Different people may react differently to a single stressful situation. In some instance, the impact of stressors may become overwhelming to the person, who may not have the knowledge and skill to identify the symptoms, of a possible psychological breakdown[18]. In the context of the emotional and psychological well-being of legal practitioners, the use of terms such as "burnout",

stressed, depressed or "Professional Paralysis"[19] are not uncommon[20].

[24] Further, the eminence, in which members of the legal profession are generally viewed, inevitably comes with societal stigmatization[21] under circumstances where practitioners do not live up to standard, albeit due to psychological ill health. Logically, the stigma

surrounding mental health conditions suffered by legal professionals, adds to anxiety and depression. Therefore, a practitioner may not feel free to disclose for open discussion feelings manifesting depression, nor to take time off, dreading judgement from colleagues or clients.

[25] There can be no doubt that in the context of the fit and proper requirement, mental health issues suffered by legal practitioners are of great consequence. Legal practitioners (as all persons) with a mental illness or who are being treated as such persons, are required to be treated with humanity and respect for their inherent dignity[22]. For these reasons, there is a need for greater attention and understanding from within the legal profession at large,

about mental health issues. Consequently, I find the pronouncement made by Ebrahim J (albeit in a different context) pertinent when he stated:-

“Judicial officers should keep abreast with developments in other disciplines eg. psychology and although this will undoubtedly mean an increase in the workload of judicial officers and the machinery of justice generally, ways must be sought of accommodating this, as it is the price to be paid for professionally administering justice in an increasingly complex society[23]” .

[26] A culture within the legal fraternity, where open dialogue (without fear of stigmatization) about mental health issues is encouraged, can only serve the common good of the profession and the interest of the public at large.

[27] In the case of the legal profession, which is regulated by the LPC, there is a need for a dedicated and confidential reporting policy

process facilitated by the LPC, in terms of which legal practitioners experiencing mental health issues (that may place them at risk of not attending to professional affairs) may report to the LPC and be assisted and directed fittingly. This is vital in order to ensure that the values underpinning the Constitution are embraced, whilst ensuring accountability by legal practitioners.

[28] In my considered view, the

facts

of this case illustrates the complexities of mental health illness and its adverse impact on a legal practitioner's executive and/or occupational functioning, which facts I find deserves a sensitized approach to be adopted when assessing the evidence. Having regards to the stated considerations, which informs my discretion to be exercised judicially, I revert to the merits in deciding whether the first respondent is a fit and proper person, befitting the status of a legal practitioner.

The First Respondent

[29] Two psychology expert witnesses diagnosed the first respondent with Major Depressive Disorder. It is trite that the role of an expert witness is to provide the court with specialist knowledge in a specialist field of practice, which legal professionals are not able to supply. The duty of expert witnesses (in this case a Psychiatrist and a Clinical & Neuropsychologist) is to the Court and not the instructing party. In the absence of countervailing evidence, there is no reason to doubt the qualifications, experience and opinions of the two experts. I am constrained to accept the contents

and correctness of the respective expert reports.

[30] Both Dr Longano and Ms Cramer, explains the Major Depressive Disorder suffered by the first respondent, as a delayed response which was triggered, by her psychological regression over the years following her father's death in 2017, combined stressors relating to her career trajectory and responsibilities. The expert opinion is further that the mental and emotional

deterioration in the first respondent has reached a progressive and pathological stage, as it now impedes not only her occupational functioning but all spheres, of her being. The first respondent is currently undergoing pharmacotherapy and psychotherapy to address the Major Depressive illness.

[31] I considered the first respondent's historical background, in particular her scholastic achievements and her rise as an admitted

Attorney and find the reported state of lethargy experienced by her, the loss of interest in work related and other life activities, to be rather out of character. Further, the cause for her resignation from the second respondent in 2020 is not known from the available evidence, however, it is common knowledge as stated in the expert reports, that during the year 2020 the world including South Africa, endured the unprecedented Covid 19 pandemic, with its concomitant career-impeding impact. It is therefore probable that there was genuine cause for the first respondent to resign from the second respondent, whereafter she started her own practice to fend for herself financially, albeit ill-considered at the time.

[32] On a balance of probabilities, I find that the stressful personal and professional circumstances in which the first respondent found herself between 2016 and 2021, together with the symptoms of depression, weighed by the experts are in harmony with her having functioned under a depressive psychological state, long before the diagnosis of Major Depressive Disorder was made in 2023.

[33] The latter mentioned finding made is fortified by the expert opinion on record, that the first respondent's depressed psychological condition, worsened in time to a progressive and pathological state[24], which negatively impacted on her social and occupational functioning.

[34] The requirement for legal practioners, to be fit and proper persons is not defined in the relevant legislative instruments[25]. Still the type of "character screening" remains a stringent requirement. In the ordinary course of events, findings

made that a legal practioner is not a fit and proper person are based on character defects[26]. This is not such a case. Major Depressive Disorder is not a character flaw but rather an illness. The term fit and proper can thus only be understood in the context of the unique facts of the case.

[35] I find that the body of evidence proves that the first respondent is currently, not fit and proper to practice as a legal practioner. Her occupational incapacity stems directly from her ill mental health. I however accept the opinion proffered by the two experts, asserting that the first respondent holds good future prospects of regaining her psychological well-being, to return to a functional state in her personal and professional life.

The Sanction/ Intervention

- [36] In the main, the LPC prayed for the court to strike the first respondent's name from the roll of legal practioners. Before imposing the severe penalty of striking, the Court must be satisfied that the lesser sanction of suspension, will not achieve the purpose of the Court's supervisory power over the practitioner.
- [37] In this regard, I considered that the first respondent's transgressions stems directly from her ill psychological condition. This is also the first complaint against the first respondent. Mindful that a depressive state of mind may befall the best of personalities, the first respondent demonstrates resilience as a positive character trait. As reported by the psychologist, she expressed an appreciation for her to submit to the recommended treatment. She has a desire to recover to her previous level of functioning. She took the court into her confidence and presented her case with a positive attitude, which makes her future recovery realistic. Within the parameters of the unique facts of the case and as correctly conceded by Counsel for the LPC, I find that a suspension on relevant conditions is the most fitting sanction to issue.

D. Costs

- [38] Regarding the costs of the application, the general rule is that the LPC as custos morum of the legal profession is not a conventional litigant. It is statutorily duty bound to place facts before the Court for adjudication in matters of this nature. It is therefore said to be entitled to its costs, even if unsuccessful[27].
- [39] It is contended for the first respondent, that the exercise of the court's judicial discretion on the costs, should be informed by the contents of the expert reports, on her ill psychological state, which adversely affected her general and occupational functioning. In this regard, I considered the decision in *Ferreira v Levin No and Others; Vryenhoek and Others v Powell No and Others*[28] where the court held the following :

"The Supreme Court has over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer [29] and the second that the successful party should as a general rule, have his or her costs.[30] Even this second principle is subject to the first[31] ". [My emphasis]

- [40] Guided by the quoted authority, I move from the vantage point, that our courts are not stripped of its judicial discretion, about costs awards in cases of this nature. It remains prudent for the court to balance the inequities in accordance with the peculiar facts of the case, in order to arrive at a just order as to costs.
- [41] The first respondent fully cooperated with the LPC during the course of the application. Her transgressions directly stems from the Major Depressive Disorder and not intentional disobedience. She is substantially successful in her opposition to a striking order, in that a suspension is found more appropriate on the facts found to be proved. It is further not in issue that the first respondent attempted to amicable resolve the matter with the LPC, in

light of her ill mental health. However, the LPC refused to individualize her circumstances and preferred protracted legal action. The LPC approached the application “run of the mill” having resolved to launch straight-out suspension applications, against legal practitioners, who were not in possession of Fidelity Fund certificates for the year 2021[32]. No consideration was given to investigate the first respondent’s circumstances or to conduct a hearing during which the ill mental health, explaining her conduct may have come to the knowledge of the LPC.

[42] Notably, there is no provision for a dedicated and confidential reporting policy process, in terms of which legal practitioners (like the first respondent) afflicted with mental health issues are allowed to report to the LPC in its capacity as regulatory body, for assistance and direction.

[43] The evidence proves that the first respondent continues to suffer under the Major Depressive Disorder and it may well be said, that this is not the type of case, which justified the approach adopted by the LPC. It is for these reasons that I find merit in deviating from the usual order made in this type of application. In striking the required delicate balance on the facts, I find it a just order as to costs to make no order. I propose for the following order to issue.

- c. Completes the Practice Management training course, in the event that she intends to practice for her own account;

R Matthys

Acting Judge of the High Court

Gauteng Division, Pretoria

I concur and it is so ordered

N Davis

Judge of the High Court

DISSENTING JUDGMENT

MOOKI J

[44] I agree that the first respondent is not a fit and proper person in relation to what is expected of a legal practitioner. The majority concludes that she be suspended from practice. I take a different view and consider that striking her name from the roll of legal practitioners is the more appropriate sanction.

[45] The majority holds that the first respondent’s conduct was not brought about by a character flaw, but an incapacity due to “ill mental health.”[33] There is no analysis of the offensive conduct. There is also no showing how the first respondent’s “ill mental health” made her

- (1) practice without a fidelity fund certificate (2) fail to pay professional fees (3) fail to submit auditors' reports, or (4) start a law practice, "JM Halles Inc," without informing the LPC that she had done so.
- [46] The first respondent prejudiced her clients and the public.[34] She practised without a fidelity fund certificate and had a trust account. She did not contend being unaware that she had to have been issued a fidelity fund certificate to practice as she did. She gave no explanation for practising without such a certificate.
- [47] Practising without a fidelity fund certificate is one of the more egregious conducts by a legal practitioner. The gravity of that conduct is reflected in the law in that non-compliance is an offence. A practitioner is liable, on conviction, to a fine or to imprisonment for a period not exceeding two years or to both a fine and imprisonment. This is in addition to an automatic striking off the Roll on a conviction for practising without a certificate.[35]
- [48] The first respondent was issued with a fidelity fund certificate in 2020. She therefore knew that she could not practice without such a certificate in each of the subsequent financial years. Her conduct shows a direction of mind to pursue a particular course, regardless of consequences.
- [49] The court suspended the first respondent on 20 April 2023, pending a return day to consider whether her name be struck from the Roll. She was served with the suspension order. Part of the order stipulated that she was not allowed to practice pending the determination of the matter. The LPC avers that she practised during her suspension.[36] She did not contest this averment. The finding by the majority[37] that she did not practice during her suspension is not borne by evidence.
- [50] I consider the fact of the first respondent continuing to practice contrary to a court order an aggravation in her conduct. It is a matter that bears on her character. It is the same indifference to practice, similar to her failure to explain practising without a fidelity fund certificate. I do not comprehend how such conduct relates to her being depressed.
- [51] The first respondent's reliance on the reports by Ms Cramer and Dr Longano strike me as self-serving and a rationalisation after-the-fact. The first respondent was served with the application on 20 January 2023. She then consulted with Dr Longano on 22 February 2023. There is no explanation why she did not consult a psychiatrist before being served with process.

[52] Ms Cramer wrote that:

It is vital to understand that her occupational challenges stem directly from her delayed depression, which emerged in response to her father's illness, his death, and the associated stressors. This delayed onset of depression is not indicative of her character or professionalism, but rather a pathological psychological response to overwhelming circumstances.

[53] The chronology of events does not support this

conclusion:

53.1 2016: Her father was diagnosed with cancer.

53.2 2017: Her father died.

53.3 2018: (1) She terminated her employment with Van Wyk Attorneys (2) She took up employment with the second respondent (3) She sat and failed the conveyancing examination (4) She became a director of the second respondent.

53.4 2019: She passed one of three of the Practice Management Training Course.

53.5 2020: (1) She obtained a Fidelity Fund Certificate (2) She resigned from the second respondent without informing the LPC (3) She started a law practice, practising for her own account, without informing the LPC.

[54] The first respondent consulted professionals after the LPC commenced proceedings against her. Dr Longano produced a report on the first respondent on 11 October 2023 (for a consultation on 22 February 2023), which is the same date when the first respondent deposed to her answering affidavit. The first respondent then consulted with Ms Cramer on 19 October 2023. There is no explanation why she consulted with Ms Cramer at that time.

[55] The first respondent does not explain her conduct. For example, she says that she left her employment with the second respondent without informing the LPC, and further that she opened a practice for her own account; also without informing the LPC. She does not say she was unaware that she had to inform the LPC. There is no evidence that she acted as she did because she was

depressed.

[56] I am not persuaded by Ms Cramer's statement that "It is vital to understand that her occupational challenges stem directly from her delayed depression, which emerged in response to her father's illness, his death, and the associated stressors." Her father died in 2017. She terminated her employment with Van Wyk Attorneys in 2018 and became a director of the second respondent in the same year.

[57] There is no evidence that the death of the first respondent's father had a bearing on her professional life in 2018 or in

2019. Similarly, there is no evidence that her decision to leave the second respondent and to practise for her account in 2020 had any relation to her father's death. Ms Cramer does not say how, medically, the decisions of the first respondent during the period 2018 to 2020 are related to "delayed depression."

[58] There is no explanation why Dr Longano issued his report on 11 October 2023, when he consulted with the first respondent on 22 February

2023. There is no evidence that Dr Longano had subsequent consultations with the first respondent after the session on 22 February
2023. This is important because Dr Longano could not draw conclusions about the first respondent without further consultations. He says, in paragraph 7 to his “conclusion” in his report, that he commenced the first respondent on antidepressant treatment “at our first meeting.” He then continues that “...at this juncture [I] am encouraged to be able to report some modest improvement in her condition.” Dr Longano could not report on the first respondent’s condition in October 2023 when he last consulted with her in February 2023.
- [59] It is difficult to conceive how a person with depression would resign as a director of a law firm and commence practice for her own account. The respondent starting a law practice suggests that she had the presence of mind at odds with what would be expected of a person with depression. I am not persuaded by Ms Cramer’s opinion that the first respondent’s conduct was brought about by “...delayed depression, which emerged in response to her father’s illness, his death, [...]”
- [60] Mental health is an important issue, especially in the profession. The circumstances pertaining to the first respondent do not make for the best set of facts for the court to comment on mental health issues as they may bear on the fitness or otherwise of a practitioner to remain in practice.
- [61] The circumstances pertaining to the first respondent are a calculation and the first respondent would use mental health as a crutch for an after-the-fact justification for her conduct. I would therefore have the first respondent’s name be struck from the Roll of legal practitioners. I would also allow costs in favour of the LPC.

O Mooki

Appearances

Counsel for Applicant: Mr R Stocker (Attorney with right of appearance in the High Court)

Counsel for first Respondent: Advocate P Strathern SC with Advocate E Sithole,
(Instructed by AF Van Wyk Attorneys)

- [1] Act 28 of 2014 as amended
- [2] AF Van Wyk is first respondent’s current Attorney of record.
- [3] See Section 85 (1)(a)(b) read with Sections 85(6); Sections 95 (1) of the LPA ;Rule 27.1 LPC Rules
- [4] The Fidelity Fund certificate expired 31/12 2020
- [5] See section 84 (1) of the Legal Practice Act 28 of 2014

[6] See Rule 54.29 of the LPC Rules

[7] See Rule 4 of the LPC Rules read with Rule 3.16 of the Code of Conduct

[8] Dr Longano's report was tendered in evidence by agreement between the parties.

[9] An inability to feel pleasure – Oxford Dictionary

[10] Abnormal lack of energy- synonyms-lethargy, inertia, listlessness, lifelessness, inactivity, inaction, dormancy, slowness, languor, languidness, torpor, torpidity, dullness, heaviness, apathy, passivity, weariness, tiredness, lassitude, fatigue, sleepiness, drowsiness, enervation, somnolence, laziness, idleness, indolence, sloth, slothfulness, phlegm, asthenia, neurasthenia, hebetude, lack of energy-lethargy, inertia,

listlessness, lifelessness, inactivity, inaction, dormancy, slowness, languor, languidness, torpor, torpidity, dullness, heaviness, apathy, passivity, weariness, tiredness, lassitude, fatigue, sleepiness, drowsiness, enervation, somnolence, laziness, idleness, indolence, sloth, slothfulness, phlegm, asthenia, neurasthenia, hebetude, lack of energy- Oxford Dictionary

[11] See Affidavit in support of condonation for the late filing of her answering affidavit

[12] The contents and correctness of this report was tendered in evidenced by agreement between the parties

[13] Medical treatment by means of drugs

[14] Methods for treatment of mental disorders and psychological problems

[15] As at 10 April 2024 in the amount of R12100.

[16] Also, see the Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic entities published i.t.o Section 36 (1) of the Legal Practice Act 28 of 2014 as amended.

[17] Personal stressors and legal practice: Your firm needs a plan by Thomas Harban- De Rebus 24, 1 December 2017

[18] It is noteworthy that authoritative research, writings and or statistics on the lived experiences and impact of mental health issues on legal practitioners in South Africa are rare.

[19] "Professional Paralysis" is the term aptly employed by author Ingrid M. Hoffman as the state in which some legal practitioners find themselves, when they are no longer able to cope with the demands of practice and choose to avoid, rather than deal with challenges they face. She explains the form of professional breakdown, as a bewildering, mind-blurring condition that is illogical, inexplicable and sometimes untreatable' See IM Hoffman Lewis and Kyrou's Handy Hints on Legal Practice Second South African Edition (Durban: LexisNexis) Chapter 64 pages 419- 422

- [20] According to the World Health Organization “in 2019, 1 in every 8 people, or 970 million people around the world, were living with a mental disorder with anxiety and depressive disorders the most common. In 2020, the number of people living with anxiety and depressive disorders rose significantly, because of the COVID-19 pandemic. Initial estimates show a 26% and 28% increase respectively for anxiety and major depressive disorders in just one year. While effective prevention and treatment options exist, most people with mental disorders do not have access to effective care. Many people also experience stigma, discrimination and violations of human rights”. See <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>
- [21] Stigma, according to Herek et al. (2009), may be understood in terms of the different ways, it manifests at the self, social, and structural levels. Self-stigma is a subjective process, marked by negative feelings (about oneself), maladaptive behavior, identity transformation, or stereotype endorsement, as a result of an individual's experiences, perceptions, or anticipation of negative social reactions, based on a stigmatized social status or health condition.
- [22] United Nations Universal Instrument General Assembly Resolution 46/119 Principles for the protection of persons with mental illness and the improvement of mental health care; Also see Section 10 of the Constitution 1996.
- [23] S v S 1995(1) SACR 50 (ZS) at 60 b
- [24] Mental disorders such as depression is caused by a complex interplay of genetic, biological, social and environmental factors- Depression: The Invisible Pain By Dr Sharon Auld Clinical Psychologist Durban, KwaZulu-Natal (sadag.org) www.sahealth.sa.gov.au/mind/myths+and+facts+about+mental+illness
- [25] The LPA ,Regulations ,Rules or Code of conduct
- [26] Eg. untruthfulness or a lack of integrity
- [27] Law Society, Northern Provinces v Mogami & others 2010
- (1) SA 186 (SCA) para 31. Botha v Law Society of the Northern Provinces (446/2007)
- [2008] ZASCA 106;
- [28]
- [1996] ZACC 27; 1996
- (2) SA 621 CC
- [29] Kruger Bros. and Wasserman v Ruskin 1918 AD 63 at 69.
- [30] Fripp v Gibbon & Co 1913 AD 354 at 357; Merber v Merber 1948 1 SA 446 (A) 452.

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- [31] Union Government (Minister of Railways and Harbours) v Heiberg 1919 AD 477 at 484; Mofokeng v General Accident Versekering Beperk 1990 2 SA 712 (W) 716D.
- [32] Confirmation of the Resolution taken by the LPC, Gauteng Provincial Council, dated 7 June 2021 forms part of the LPC's case.
- [33] Para 35 of the majority decision.
- [34] See para 17 of the main judgement, where the majority concludes otherwise.
- [35] Section 84 (1) of the LPA, read with section 93 (8).
- [36] Para 3.5 of the supplementary founding affidavit – Caselines 04-6.
- [37] Para 16, majority decision.
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