

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Louw (58534/2019) [2020] ZAGPPHC 708 (17 November 2020)

[2020] ZAGPPHC 708

COURT

North Gauteng High Court, Pretoria

BEFORE

R G Tolmay, M B Mokoena

CASE / FILE NUMBER

58534/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF SOUTH
AFRICA
(GAUTENG DIVISION, PRETORIA)
(1)

REPORTABLE: YES/NO
(2)
OF
INTEREST TO OTHER JUDGES: YES/NO
(3)
REVISED
17/11/2020
Case
number: 58534/2019

Date: In

the matter between: SOUTH
AFRICAN LEGAL PRACTICE COUNCIL
APPLICANT
AND
RUDOLPH
LOUW
RESPONDENT

JUDGMENT

TOLMAY, J:

- [1] This is an application in terms of Section 44(1) of the Legal Practice Act[1] (LPA). On 21 May 2020 the court suspended the respondent pending finalisation of the application and ordered him to show cause, on or before 10 November 2020 why his name should not be struck from the roll. With the exception of him having filed a notice of intention to oppose on 9 October 2019, the respondent has not participated in the application.
- [2] As the LPG argued it is trite that applications of this nature constitute a disciplinary enquiry by the court into the conduct of the practitioner concerned. The proceedings do not constitute ordinary civil proceedings, but are *sui generis* in nature.[2] The hearing before court is an enquiry conducted by the court into officer's fitness to remain on the roll of attorneys.[3] The SALPC fulfils the role of *amicus curiae*. [4] The question whether a legal practitioner is a fit and proper person to practice as such lies in the discretion of the court. The court's discretion is not exclusively derived from the LPA, but is inherent in nature, over and above the provisions of the LPA.[5] The appropriate sanction, namely a suspension from practice or striking from the roll, lies within the discretion of the court.[6] In exercising its discretion it is trite that the court is faced with a three-stage inquiry:
- i) The first inquiry is for the Court to decide whether or not the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry.
 - ii) Once the court is satisfied that the offending conduct has been established, the second inquiry is whether the practitioner concerned is a fit and proper person to continue to practise. This inquiry entails a value judgment, which involves the weighing up of the conduct complained of against the conduct expected of an attorney.
 - iii) If the court is of the view that the practitioner is not a fit and proper person to practise as an attorney, the third inquiry is whether in all the circumstances the practitioner in question is to be removed from the roll of attorneys or whether an order suspending him from practice for a specified period will suffice. This is a question of degree and will depend on the facts of the case. In deciding whether an attorney ought to be removed from the roll or suspended from practice, the court is not first and foremost imposing a penalty. The main consideration is the protection of the public.[7]

- [3] If a court finds that an attorney is not a fit and proper person to continue to practise as a legal practitioner, he/she must be removed from the roll. If the court however has grounds to assume that after a period of suspension the legal practitioner will be fit to practise as an attorney in the ordinary course of events, an order of suspension will be more appropriate. The facts upon which the court's discretion is based should be considered in their totality and the court must not consider each issue in isolation.[8]
- [4] The law expects from a legal practitioner the highest possible degree of good faith, in his dealings with his clients, the public and the court. This implies that an attorney's conduct, submissions and representations must at all times be accurate, honest and frank.[9]
- [5] The court has an obligation to protect the integrity of the courts and the legal profession.
- [6] Where allegations and evidence are presented against a legal practitioner they cannot be met with mere denials by the attorney concerned. In this instance there is not even that. If allegations are made by the SALPC and underlying documents are provided which form the basis of the allegations, they cannot simply be brushed aside, the legal practitioner concerned is expected to respond meaningfully to them and to furnish a proper explanatoin. [10] By the nature of disciplinary proceedings, the legal practitioner concerned is expected to place the full facts before Court for the Court to come to the correct conclusion.[11]
- [7] The respondent was admitted as an attorney of this court on 17 April 2003. The respondent, until his suspension, was practising as a single practitioner for his own account under the style of Lauw Attorneys in Pretoria.
- [8] The application was served on the respondent personally on 1 October 2019. The respondent entered notice of his opposition to the application on 9 October 2019. The notice of set down for the hearing on 10 November 2020 was served on 20 July 2020 and the order of 21 May 2020 was served on the respondent personally on 13 August 2020. The respondent is aware of the application and that it is set down for hearing on 10 November 2020.
- [9] The respondent failed to submit his annual auditor's reports for the periods ending 28 February 2017 and 28 February 2018. He also failed to timeously submit this report during 2014 and 2015.
- [10] The annual auditor's report is intended to satisfy the Law Society/SALPC that, prima facie, a practitioner has kept proper accounting records and that trust funds entrusted to the practitioner are handled and administered properly. A fidelity fund certificate is issued on the strength of an unqualified audit report. The failure to submit an unqualified auditor's report disentitles a practitioner to be issued with a fidelity fund certificate.

- [11] The purpose of a fidelity fund certificate is to protect the general public from pecuniary loss as a result of theft of trust funds committed by a practising attorney or persons in his employ. The continued practise of a practitioner for his own account without being in possession of a fidelity fund certificate is contrary to the peremptory norms of the Attorneys' Act[12] and the Legal Practice Act[13] and is also an offence under both regimes rendering such a practitioner liable to a fine and/or imprisonment[14].
- [12] The respondent did not qualify for and has not been issued with a fidelity fund certificate since 1 January
2017. He, nonetheless, continued practising as an attorney for his own account after 1 January 2017 and also did so previously during 2008, 2011, and 2016.
- [13] The erstwhile Law Society addressed correspondence to the respondent regarding his failure to submit his auditor's reports and his continued practise without a fidelity fund certificate, to which he did not respond. The respondent was also summoned to appear before a disciplinary committee for his conduct, which he did not attend, and he has failed to pay his membership fees, to the erstwhile Law Society and to the South African Legal Practice Council, since 2016.
- [14] The Law Society and SALPC has also received three complaints illustrating the respondent's:
- 28.1 failure to properly attend to his client's instructions;
 - 28.2 failure to account for trust funds;
 - 28.3 delayed payment of trust funds;
 - 28.4 failure to pay over trust funds;
 - 28.5 failure to reply to correspondence (from his client's and his colleagues).
- [15] The complaints were repeatedly referred to the respondent for his comments and have been referred to him again during this application. The respondent has not provided any comments or explanation to contradict the complaints.
- [16] The SALPC's supplementary founding affidavit states that the complaint by Junaid Khamissa Attorneys on behalf of African Lime (Pty) Ltd, where the respondent failed to repay an amount of R429 000-00 to African Lime, is now also the basis for a claim against the Legal Practitioner's Fidelity Fund. More than a year has lapsed without the respondent having paid over or accounted for African Lime's funds. On a preponderance of the probabilities, the respondent has misappropriated these funds.
- [17] The respondent's conduct is serious. Notwithstanding his failure to comply with his lawful obligations as an attorney, his contravention of peremptory norms, and the commencement of the present application, the respondent has not undertaken corrective measures, nor has he proffered any explanation for his conduct.

[18] An attorney's duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty. Neither negligence nor wilfulness is an element of a breach of such duty.[15] Where trust money is paid to an attorney it is his duty to keep it in his possession and to use it for no other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have available liquid funds in an equivalent amount. It is imperative that trust money in the possession of an attorney should be available to his client the instant it becomes payable. Trust money is generally payable before and not after demand.[16]

[19] When the Court admits an attorney to the profession, he is put in a position to conduct matters of trust with the public. He occupies a position of great confidence and power and the Court is entitled to demand a very high standard of honour from him in the profession. The law exacts from him *uberrima fides* where he acts as agent for others; that is the highest possible degree of good faith.[17]

[20] The respondent's conduct does not meet the standard of behaviour, conduct and reputation which is required of attorneys and officers of the court. The respondent can no longer be considered to be a fit and proper person to be allowed to practice as a member of a learned, respected and honourable profession.

[21] In *General Council of the Bar of South Africa v Geach & Others*[18] the Supreme Court of Appeal (per Wallis JA) said in relation to lawyers:

"After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard won freedoms is without parallel. As Officers of our Courts, lawyers play a vital role in upholding the Constitution and ensuring that our system of justice is both efficient and effective. It therefore stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them. It follows that generally a practitioner who is found to be dishonest must surely in the absence of exceptional circumstances expect to have his name struck from the Roll."

[22] The respondent's conduct is serious and involves dishonesty. He has failed, at a fundamental level to conduct himself in the manner expected of a legal practitioner and officer of the Court and has failed to show cause why his name should not be struck from the roll.

[23] When the SALPC, after adequate investigation and consideration, has come to the conclusion that misconduct has been committed by an attorney, it is its duty to bring the matter to the notice of the Court.[19] The award of attorney and client costs in these matters is not punitive. It has been confirmed over many years as the appropriate

order in circumstances where the SALPC ought to be reimbursed to the full extent possible.

[24] The general rule is that the SALPC is entitled to its costs, even if unsuccessful, and usually on an attorney and client scale.[20] There is no reason present in this matter to substantiate deviation from the general rule.

[25] We make the following order:

1. That the name of RUDOLPH LOUW (respondent) is struck from the roll of legal practitioners.
2. Paragraphs 2 to 12 of the order of 21 May 2020 will remain in effect.
3. The respondent is ordered pays the costs of the application on an attorney and client scale.

R G TOLMAY

JUDGE OF THE HIGH COURT

M B MOKOENA

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING:

10 NOVEMBER 2020

DATE OF JUDGMENT:

17 NOVEMBER 2020

ATTORNEYS FOR APPLICANT: RW Attorneys Inc.

COUNSEL FOR APPLICANT: Mr L Groome

ATTORNEY FOR RESPONDENT: No appearance

[1] No 28 of 2014

[2] Solomon v The Law Society of the Cape of Good Hope 1934 AD 401 at 407; Citrota and Another v Law Society, Transvaal 1979

(1) SA 172 (A) at 187H; Prokureursorde van Transvaal v Kleynhans 1995 (1) SA 839 (T) at 851G-H.

[3] Law Society of the Northern Provinces v Le Roux 2012 (4) SA 500 (GNP) at 502 E - F.

[4] Ibid.

[5] See: Prokureursorde van Transvaal v Kleynhans (supra) at 851E-F; Law Society of the Cape of Good Hope v C 1986

(1) SA 616 (A) at 638C-639F; Law Society of the Transvaal v Tloubatla [1999] 4 ALL SA 59 (D) at 63G-I; Law Society of the Transvaal v Machaka and Others (No 2) 1998 (4) SA 413 (TPD).

[6] See: A v Law Society of the Cape of Good Hope 1989 (1) SA 849 (A) at 851A-F; Jasat v Natal Law Society 2000 (3) SA 44 (SCA) at 51B-I

- [7] See: *Jasat v Natal Law Society* (supra); *Law Society of the Cape of Good Hope v Budricks* 2003 (2) SA 11 (SCA) at 13H-14; *Malan v The Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at p 219, par 7.
- [8] See: *Law Society, Cape of Good Hope v Segal*/ 1975 (1) SA 95C at 99B; *Beyers v Pretoria Batie Raad* 1966 (2) SA 593 (A) at 606B; *Prokureursorde van Transvaal v Kleynhans* (supra); *Malan v The Law Society of the Northern Provinces* (supra),
- [9] *Heppell v The Law Society of the Northern Provinces* 2017 JDR 1612 (SCA) at par 12.
- [10] *Hepple v Law Society of the Northern Provinces* 2014 JOA 1078 at par 9.
- [11] *Prokureursorde Van Transvaal v Kleynhans* 1995 (1) SA 839 (t) at 853 G-H.
- [12] Section 44(1).
- [13] Section 84(1).
- [14] Section 83(10) of the Attorneys' Act and section 93(8) of the Legal Practice Act.
- [15] *Incorporated Law Society, Transvaal v Behrman* 1977(1) SA 904(T) at 905 H.
- [16] See: *Law Society, Transvaal v Matthews* (supra) at 394; *Incorporated Law Society, Transvaal v Visse and Others: Incorporated Law Society Transvaal v Viljoen* 1958 (4) SA 115 (T) at 118 F - H;
- [17] *Incorporated Law Society, Transvaal v Visse and Others; Incorporated Law Society Transvaal v Viljoen* 1958(4) SA 115(T) at 131 D - G.
- [18] 2013 (2) SA 52 (SCA) at para. 87
- [19] *Incorporated Law Society v Taute* 1931 TPD 12 at 17.
- [20] *Law Society of the Northern Provinces v Mogami & Others* 2010 (1) SA 186 (SCA) at paragraph 31: See also *Law Society of the Northern Provinces v Sonntag* 2012 (1) SA 372 (SCA) at paragraph 20; *Law Society of the Northern Provinces v Dube* 2012 [ALL] 4 SA 251

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2020/708.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/south-african-legal-practice-council-v-louw-unknown-topic-agpphc-2020>

Prepared on 11 October 2026 · Esheria