

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Manamela (2349/2022) [2024] ZAGPPHC 1057 (22 October 2024) [2024] ZAGPPHC 1057

COURT

North Gauteng High Court, Pretoria

BEFORE

Kumalo, Myburgh

CASE / FILE NUMBER

2349/2022

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FLYNOTES:

PROFESSION

– Striking off – Gross
misconduct

– Misappropriation

of trust funds – Allowed himself to be used as an instrument
to defraud unsuspecting members of public

– Failed to comply

with fundamental regulatory obligations – Caused substantial
prejudice to unsuspecting members

of public and was enriched in

process – Flouted several rules and regulations of

profession – Slim to no prospects

of rehabilitation –

Failure to acknowledge seriousness of misconduct – Struck
off roll of legal practitioners.

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law

and SAFLII

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO.: 2349/2022

(1)

REPORTABLE: NO

(2)
OF INTEREST TO OTHER JUDGES: [N]
(3)
REVISED: [N]

Signature: Date: 22/10/24
In

the matter between: SOUTH
AFRICAN LEGAL PRACTICE COUNCIL
Applicant
and
TEBOGO
ELMON MANAMELA
Respondent

JUDGMENT

Kumalo J

[1]. This is an application in terms of section 44(1) of the Legal Practice Act no.28 of 2014 (the “LPA”) wherein the Applicant seeks an order to have the name of the Respondent struck off the roll of Legal Practitioners. The application is opposed.

[2]. The Applicant is the South African Legal Practice Council, a body corporate with full legal capacity established in terms of section 4 of the LPA which exercises jurisdiction over all legal practitioners in South Africa.

[3]. The Respondent is Tebogo Elmon Manamela, a Legal Practitioner who was admitted as an Attorney of this Court on 4 July 2018 and whose name is still on the roll of Legal Practitioners and is according to the records of the Applicant currently practising as an attorney of this Court for his own account under the name and style of Manamela Elmon Attorneys at No.5[...] S[...] B[...] Street, Arcadia, Pretoria, Gauteng Province.

[4]. Part A of this application was heard on 15 February 2022 on an urgent basis and an interim order granted suspending the Respondent from practice and now comes before this Court in respect of Part B, for a final order. The Respondent opposes the application for the final order.

[5]. The Respondent’s woes commenced with his failure to submit an auditor’s report to the LPC, him practising without being in possession of a Fidelity Fund Certificate, a sine quo non in the legal profession for attorneys and advocates with a trust account, and the findings of an inspection into his practice following the LPC’s receipt of numerous complaints against him. The Applicant

approximate the number of complaints to be more than 50.

[6]. This court does not intend to deal with each of these complaints against the Respondent as they all are similar, and the modus operandi was the same.

[7]. The complainants are members of the public that deposited funds into the Respondent's trust banking account for property transactions which funds the Respondent was unable to account for and the said funds had disappeared. These funds were lost in a fraudulent scheme that the Respondent wittingly or unwittingly became involved in.

[8]. The complainants in these matters apparently met with individuals who presented themselves as estate agents. These individuals would introduce them to properties located in Tembisa. They would sign offers to purchase in respect of these properties.

[9]. The purported estate agents took the purchasers to an office located in Kempton Park and informed them that the sellers had appointed the Respondent to attend to the registration of the transfers, and the complainants were required to pay the purchase prices into the respondent's trust banking account, which they did.

[10]. Once the purchasers effected payment into the Respondent's trust banking account, the purported estate agents provided the Respondent with proof of the payments and requested him to pay the said monies to Omphile Refentse Properties (ORP). In each matter the Respondent deducted a fee of R15,000.00 and paid over the balance of the funds as instructed.

[11]. The property transfers that the complainants believed were being undertaken did not occur and, when turning to the Respondent, the funds were no longer available in his trust account as he had merely transferred same to ORP minus his fees, which he transferred to his business account.

[12]. The LPC's inspection of the Respondent's accounting books indicated that during the period 17 September 2020 to 31 May 2021, the Respondent received payment of an accumulative amount of R21,105,500.00 in his trust banking account from 55 Individuals. He paid a total amount of R20,280,500.00 to ORP and transferred a total amount of R850,000.00 to his business banking account in respect of his 'fees.'

[13]. As of 31 August 2021, the Respondent held an amount of R0.91 in trust. This is a substantial trust deficit.

[14]. The Respondent's explanation is that he met with a certain lady Seboliashi and two of her associates on or about 15 December

2020. Seboliashi informed the Respondent that she and her associates had a company, namely ORP; and ORP required the assistance of an attorney, with the collection of monies due to the said company.

[15]. He agreed to handle the debt collections on behalf of ORP. It was agreed that his fee would amount to R15 000.00 per matter, which would cover the so-called "soft collection" process.

[16]. On request, the Respondent provided Seboliashi with information concerning his practice, including the name of his practice, practice number, his Fidelity Fund Certificate and proof of his trust banking account. Seboliashi and ORP did not however prepare and hand over any debtor files to the Respondent. Seboliashi, instead, contacted the Respondent telephonically and provided him with the details of the debtors.

[17]. The Respondent requested Seboliashi to furnish him with the debtor files containing all the relevant information, but he did not receive any files and documents from Seboliashi and/or ORP.

[18]. The Respondent opened a client file for ORP and obtained a company report which indicated that the company's office was based in Mamelodi. The Respondent was however informed that the company's office was in Kempton Park. The Respondent never attended at ORP's office. Seboliashi informed the Respondent that the amounts allegedly due to ORP ranged between R200 000.00 and R500 000.00.

[19]. During the period December 2020 to May 2021 the Respondent received several substantial payments in his trust banking account. Seboliashi allegedly informed the Respondent that it was the debtors who had effected payments into his trust banking account. In respect of each payment made into the Respondent's trust banking account, he appropriated a fee of R15 000.00 and transferred the said fee from his trust banking account to his business banking account. The Respondent paid the balance of the monies on trust to ORP.

[20]. It was not until April/May 2021 when the Respondent received an e-mail from an attorney practising in Kempton Park, enquiring about the status of a property transfer in which he had been instructed did he sought a meeting with Seboliashi, which meeting occurred around the same period in Pretoria.

[21]. He stated that he was assured by Seboliashi that it was an error and the matter would be rectified.

[22]. From May 2021 the Respondent started receiving telephone calls from several individuals, who enquired regarding the status of the transfers of properties which they had purchased and the availability of their monies, which they had paid into his trust banking account.

[23]. By the end of May 2021, Seboliashi could no longer be found. A company report in respect of Omphile Refentse Properties indicated that one Ms Petunia Lehlogonola Theko was the only director of the company and is not the person Respondent engaged with.

[24]. Applicant alleges that the Respondent told Mr. Reddy, the inspector that in March 2021, he had doubts pertaining to the inflow of monies into his trust account and consulted colleagues in the profession and was advised to engage his client on the matter. He nevertheless continued to receive payments into his trust banking account and make payments to ORP and appropriate a fee in an amount of R15,000.00 for every transaction.

[25]. As stated above, the Respondent opposes the application on basis that one could say in a nutshell, he believes he did nothing wrong, and his actions were within his client's mandate.

[26]. He states that he was approached by Seboliashe and her co-directors and requested that he act on behalf of the company to act essentially as a 'paymaster' and receive funds into his trust account and when the property is registered in the name of the buyer, pay out the funds to the sellers.

[27]. He agreed that he would act as the 'paymaster' for the various transactions for a fee of R15,000.00 per transaction.

[28]. He states that he specifically told the client that he was not a conveyancer but nonetheless accepted the mandate.

[29]. He further states that, on numerous occasions he requested proof of ownership of the properties concerned and was assured that it would be sent to him. When the first tranches of monies were paid into his trust account, he again requested copies of the title deeds before he could transfer any monies to the company. He was again assured that he would receive them. He proceeded to transfer the funds to the company without being in receipt of the documents he requested.

[30]. Before this Court can deal with the Respondent's response, it first needs to deal with the Respondent's application for condonation for the late filing of his answering affidavit.

[31]. The Applicant is not opposed to the Respondent's condonation application, but it must be stated that condonation is not there for the taking. A party that seeks condonation needs to make a proper application with cogent reasons for it.

[32]. Without going into detail, the Respondent's reasons for the late filing of his answering affidavit are meritless. But, in the light of the fact that the applicant does not oppose, and the fact that it would be in the interest of justice to admit same,

condonation for the late filing thereof is granted.

[33]. The Respondent's explanation deposed to in his affidavit of what he was supposed to do for the 'client or ORP somewhat differs from that which he is alleged to have provided to Mr. Reddy of the Applicant.

[34]. The Applicant alleges that Respondent had told Mr. Reddy that his services was required to perform a debt-collection service for ORP and could not provide any evidence of work done collecting the alleged debts, he on the other hand deposed to the fact that he was merely required to be a 'paymaster'.

[35]. He alleges that he specifically informed the prospective client that he was not a conveyancer, and it was agreed that he would act as a paymaster for the various transactions for a fee of R15,000.00 per transaction.

[36]. Of interest to this Court is Special General Mandate attached to the Respondent's supplementary answering affidavit. Whilst it is correct that the mandate specifically states that the Respondent is neither a conveyancer nor does he have one in his employment, provides further for what this Court can describe as startling.

[37]. Clause 2 of the mandate agreement provides that the Respondent shall receive an amount of R15,000.00 VAT exclusive on every matter brought forward by ORP. It further provides that the Respondent shall transfer all amounts to the selected bank account of ORP less the stipulated fee or any other fee due.

[38]. More startling is clause 6 thereof which provides that the Respondent shall not be liable for any actions of ORP but shall be the facilitator in the matter (my emphasis).

[39]. He requested on numerous occasions the proof of ownership of the properties from the ORP and was assured that it would be provided. Nothing though was provided.

[40]. It is perhaps worthy to note that what the nature of the matter or matters is not provided.

[41]. Again, the way Respondent has dealt with the issue of the monies that went through his trust account and cannot be recovered leaves much to be desired. He clearly does not see a problem, let alone the fact that it is a disaster. Approximately R21,000,000.00 is missing from his trust banking account and he does not see that as a problem.

[42]. His excuse is that he trusted his client. On what basis did he choose to trust his client is not stated when all the facts present in this matter required some due diligence on his part that would have avoided the catastrophe, he finds himself in.

[43]. Taking all the above into consideration, it is therefore astounding that Respondent does not see or recognise the defects in this arrangement.

[44]. Firstly, if we are to consider his version, he is not a conveyancer and is very much alive to that fact. Yet he agreed to receive monies in his trust bank account that surely concerned the selling of properties, the registration and transfer thereof.

[45]. Secondly, and more important for this matter is the fact that he stipulated in the mandate agreement that he was not to be liable for any actions of ORP and shall only be a facilitator. The question then is, a facilitator of what if he is not to take responsibility for actions of his client?

[46]. Is it then far remote to conclude that he knew what was going on, that he merely had to facilitate the transfer of monies deposited into his trust banking account to any bank account designated by ORP without further ado?

[47]. How then can it be explained the fact that, even though he was not provided with proof of ownership by ORP or the registration or transfer of the said properties, he nevertheless released the money contrary to what he claims was his mandate, namely, he would release the monies to the sellers upon proof of registration or transfers.

[48]. It is this Court's view that this is beyond a mere error of judgment but deliberate. The Respondent was motivated by the R15,000.00 fee he would earn for every transaction that went through his practice.

[49]. From the period December 2021 to May 2022, a cumulative amount of R21,105,500.00 went through his trust banking account from 55 individuals. From these funds he paid a total amount of R20,280,500.00 to ORP and transferred a tidy sum of R825,000.00 to his business account as fees.

[50]. The monies were transferred to ORP without any confirmation of the registration or transfer from the deeds' office. Respondent was very much aware of this. It is therefore ridiculous on his part to suggest that he simply followed client's instructions.

[51]. That he never met with the 55 individuals concerned is neither here nor there. They paid monies into his trust banking account, and he transferred same to the account nominated by ORP.

[52]. Had he conducted a due diligence, he would have discovered very early that this was all just a scam.

[53]. This court has difficulties to understand how an admitted attorney would agree to use his trust banking account for purposes of being a mere paymaster and receive monies into it without verifying the origins thereof and over and above that, pay himself from those monies when he in fact had done nothing that would entitle him to the fee he deducted.

[54]. It is common cause that the Respondent paid the monies over to client when he had no proof that was required in terms of his mandate namely proof of ownership of the said properties or that they had been transferred to the buyers, the complainants in this case. He alleges that he requested same, but it was not provided. He engaged client several times for the proof and was given empty promises on all times, yet he paid over monies deposited into his trust account in accordance with his 'client' instructions without any verification of the legitimacy thereof.

[55]. The last but not the least comment that this court would make is the very fact that Respondent was not a conveyancer, and he was aware of this fact. Yet, he took on work that required the services of a conveyancer and did not have one in his practice. He never bothered to enquire from his client who would be doing the conveyancing work when his job according to him was only to be the facilitator and paymaster.

[56]. He never even thought of suggesting to client that these monies should be deposited in the trust bank account of the conveyancer who would really be able to follow up on title deeds, transfers, and registration of the said properties and what was owed to municipalities in terms of rates and taxes.

[57]. The only plausible explanation for the Respondent's 'error of judgment' is the R15,000.00 fees per transaction which he was going to earn whether he performed any services or not. Otherwise, how does one explain his payments to ORP even when he was not provided any proof of registration or transfer of the said properties. The motivation therefore was the fact when he pays ORP, he can immediately pay himself the R15,000.00 fee.

[58]. This Court must in the circumstances agree with the Applicant's submission that on the most benevolent interpretation of the Respondent's conduct, he allowed his trust banking account to be utilised as a conduit, to receive monies from unsuspecting, bona fide purchasers of properties, for onward payment to the individuals who orchestrated a fraudulent property scheme.

[59]. The Respondent turned a blind eye to the true situation and failed to comply with his duties relating to the handling of trust funds, most probably because of the easy fees that he was able to debit and transfer to his business banking account.

[60]. The Applicant's submission that Law firms are accountable institutions in terms of the Financial Intelligence Centre Act 38 of 2001 ('FICA'), in terms of which one of the objects of the Act is to impose certain duties on institutions to identify the proceeds of crime is also correct.

[61]. The Respondent's firm is registered as an accountable institution with the Financial Intelligence Centre. The Respondent failed to comply with his obligations in terms of FICA to:

61.1 Establish and verify the identity of his client;

61.2 Obtain information to determine whether future transactions that will be performed in the course of the business relationship are consistent with the institution's knowledge of that prospective client, including information describing: the nature of the business relationship concerned;

61.3 the intended purpose of the business relationship;

61.4 the source of the funds which that prospective client expects to use in concluding transactions during the business relationship concerned.

61.5 Establish the beneficial owner of a legal entity.

61.6 Perform on-going due diligence which includes the monitoring of transactions, establish the source of funds and the background in relation to unusually large transactions;

61.7 and to identify an unusual pattern of transactions.

[62]. If an accountable institution is unable to obtain the necessary information as required in terms of Section 21A, the institution may not conclude a transaction during a business relationship or perform any act to give effect to a single transaction.

[63]. The Respondent did not obtain any information or source documentation to prove that monies that would be received in his trust banking account would relate to the repayment of debts due to ORP, he failed to obtain sufficient knowledge of the prospective client's business and the way the alleged debts had arisen, and the respondent did not obtain any documentation required by the FICA and/or the mandate that he saw wishes to rely on.

[64]. It should have been readily apparent to the Respondent that the monies paid into his trust banking account were highly unusual. He nevertheless failed to take any meaningful steps to determine the source of the funds being paid into his trust banking account.

[65]. The fact that the client would draw his attention to any payments immediately that such is made and be required to transfer same immediately to ORP should at the very least raise concerns, if not suspicions.

[66]. The Respondent failed to perform the fundamental due diligence engagements expected of a legal practitioner, he received fees that cannot be justified, and even when he contends that he became suspicious of the transactions, he continued to facilitate the fraudulent transactions and deducted his fees therefrom.

[67]. The Respondent's conduct is, at the very least, a failure to perform professional work or work of a kind commonly performed by an attorney with such a degree of skill, care or attention, or of such a quality or standard, as may reasonably be expected of an attorney. It also brings into serious question his honesty and integrity, and suitability to remain in the ranks of the profession.

[68]. To further compound matters, it is alleged that Respondent failed to submit his auditor's report within the 6 months of each financial year. He failed to submit timeously his auditor's report for the period ending 28 February 2021. The report was due on or before 30 September 2021 and only submitted same on 2 February 2022.

[69]. The LPC challenges the 2 February 2022 report on the basis that Respondent only instructed auditors to conduct his annual audit on 24 January 2022 after his receipt of the Applicant's application to suspend or remove him from the roll of legal practitioners. The LPC does not accept that the audit could have been properly conducted, completed and be submitted to the LPC within 6 days.

[70]. These are valid concerns, and the Respondent was invited to file an affidavit by his auditor explaining the steps taken and duties executed by him, the dates upon which he did so, the documents and records inspected, and the information recorded in the documents and records which resulted in the unqualified report. None had been filed as at the date of the hearing of this matter.

[71]. The failure thereof has also not been explained.

[72]. Due to the Respondent's failure to submit his audit report, he was not entitled to be issued with a Fidelity Fund Certificate and would therefore not have been entitled to practice for his own account. He however, continued to practice for his own account from 1 January 2022 until his suspension, whilst he was not in possession of a Fidelity Fund Certificate.

[73]. Practising without a Fidelity Fund Certificate is a criminal offence punishable by a fine or imprisonment let alone the fact that the clients on whose behalf he held the funds in trust were at risk.

[74]. Respondent does not deny the above allegation and seems to suggest in his papers that the LPA allows such subject to a payment of a penalty fee. There is however no such thing or section in the LPA. This would be the self-creation of the Respondent.

[75]. Based on all the above, this court finds the Respondent guilty of all the misconduct that he is charged with and thus must engage on the enquiry of whether the Respondent is a fit and proper person to practice as legal practitioner or an officer of this Court.

[76]. A legal practitioner to the Court has a duty to uphold the law, the duty of utmost good faith to the court and members of the public where he acts as agent for others.

[77]. As correctly submitted by the Applicant, an attorney's duty in regard to the preservation of trust monies is a fundamental, positive and unqualified duty of care.

[78]. In this instance, Respondent practised for his own account and proclaimed to the public that he possessed the expertise and trustworthiness to deal with trust monies reasonably and responsibly. As suggested by the Applicant, he failed at every turn. The fact that he was relatively new to practising on his own is no excuse and his conduct cannot be condoned.

[79]. He failed to comply with peremptory obligations and legislative safeguards to protect the public. Instead, he allowed himself to be used as an instrument to defraud unsuspecting members of the public who probably used their hard-earned savings to by property that they would call their own.

[80]. To further compound issues, Respondent has shown no remorse for his conduct or empathy with the victims of the scam. He simply dismisses it on the basis that he does not know them, never met with them and he simply carried out the mandate of his client. He further adds that the identity of his firm was stolen conveniently forgetting that he gave all the details of his firm to the would-be scammers.

[81]. It is this court's duty to protect the public and discipline errant attorneys or legal practitioners. It is the court's

view that a mere suspension from practice in this matter would transform the Respondent to become a fit and a proper person to

practise. He clearly demonstrated such character defects and lack of integrity that it is hard to visualise practising without endangering the public.

[82]. He failed to take this court to his confidence and disclose what really happened in this matter.

[83]. The seriousness of the Respondent's misconduct cannot be overstated. Yet, he failed to acknowledge it. He failed to comply with fundamental regulatory obligations and caused substantial prejudice to unsuspecting members of the public and enriched in the process.

[84]. I therefore must concur with the dictum of Wallis JA in *General Council of the Bar of South Africa v Geach & Others* that:

'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 the Courts, Lawyers play a vital role in upholding the Constitution and ensuring that our legal 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.'

[85]. With greatest of respect, the Respondent has failed dismally in this regard. He flouted so many rules and regulations of the profession that it is hard to imagine how he could be rehabilitated. Worst still, is the fact that he does not see any wrong in his conduct.

[86]. In the circumstances, this court is of the view that Respondent ought to be struck off the roll of legal practitioners of this court.

[87]. It is trite that the proceedings of this nature are *sui generis*. There is no lis between the Applicant and the Respondent. The Applicant as the regulator or custodian of the profession simply brings matters of this nature to the attention of the court as they involve officer of the court. It is therefore entitled to its costs on an attorney and client basis and this Court sees no reason why it should deviate from this general rule.

[88]. In the circumstances, the following order is made:

1. The Respondent is struck off the roll of legal practitioners (attorneys) of this Court;
2. The Respondent is to immediately surrender and deliver to the Registrar of this Court his certificate of enrolment as an attorney
of this Court;
3. In the event of the Respondent failing to comply with the terms of this order detailed in paragraph 2 within two weeks from the date of this order, the sheriff of the district in which the certificate is, is authorized and directed to take possession of the certificate and hand it to the Registrar of this Court;
4. Paragraphs 3 to 11 of the order of 15 February 2022 shall remain in force; and
5. The Respondent is to pay the cost of this application on an attorney and client scale.

KUMALO MP

Judge of the High Court,
Gauteng Division, Pretoria
I agree, and it is so ordered.

MYBURGH

Acting Judge of the High Court,

Appearances:

For the applicant: Mr L Groome Instructed by: Rooth & Wessels Inc For the respondent: Adv N
Nortje Instructed by: Boshego Attorneys

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