

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Masingi (2023/077988) [2023] ZAGPPHC 1158 (13 September 2023) [2023] ZAGPPHC 1158

COURT

North Gauteng High Court, Pretoria

BEFORE

Pretorius

CASE / FILE NUMBER

2023/077988

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REPUBLIC
OF SOUTH
AFRICA
IN
THE HIGH
COURT OF
SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
Case
No: 2023-077988

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED

DATE:

13/9/2023
In

the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL
Applicant
And
JACOB ABEL MASINGI
Respondent

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E- MAIL / UPLOADING ON CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 13 SEPTEMBER 2023

PRETORIUS J:

1. This is an urgent application for the respondent, Jacob Abel Masingi, to be struck from the roll of attorneys of this Court, alternatively, to suspend the respondent from practice as an attorney, on such terms and conditions as the Court orders.

SERVICE OF THE APPLICATION:

2. The sheriff effected service on the respondent on 8 August
2023. A notice of intention to oppose the application was served on 11 August 2023. Nothing was heard from the respondent until 5 September 2023 when the matter was on the roll for urgent applications. Counsel appeared for the respondent.
3. No answering affidavit was delivered, although the respondent was granted more than the prescribed time since service of the application.
4. The Court stood the matter down until 7 September 2023, to afford the respondent the opportunity to file his opposing papers at this late stage.
5. Although the Urgent Court Roll had closed at 12h00 on 31 August 2023, the respondent only filed his answering affidavit on 4 September 2023 and his heads of argument on 4 September 2023. This was in total contravention of the rules, but due to the relief sought of, either suspension from the practice of an attorney, or striking off the roll of the attorneys, the Court granted the respondent the indulgence.
6. Unfortunately, the respondent once more did not adhere to the Rules of the High Court but filed a document with the heading "RESPONDENT'S ANSWERING AFFIDAVIT AND FOUNDING AFFIDAVIT IN THE COUNTER-APPLICATION." This is a total abuse of this Court's Rules.
7. The counter application was not brought in terms of the Rules as an urgent application and I cannot understand that an attorney and his counsel can file such a document.
8. The gist of the document is that the respondent is launching a review application to review the decision by the Legal Practice Council of 17 April 2023 to approach the Court to have the respondent suspended as an attorney or to strike him off the roll of attorneys without first having a disciplinary enquiry.
9. The matter was heard on 7 September

2023. The Court enquired from the applicant whether the counter application was on the urgent court roll. Counsel for the respondent submitted that the counter application was not part of the urgent application. I therefor dealt with the urgent application before me. Counsel for the respondent's heads of argument dealt with the review application and did not deal with the application before Court. His argument in Court was mostly dealing with the review application, although he had conceded that the review application was not before this Court.

THE PARTIES:

10. The applicant is The South African Legal Practice Council ("LPC") who exercises jurisdiction over all legal practitioners and, inter alia, regulates the professional conduct of legal practitioners.
11. The respondent is Jacob Abel Masingi, an adult male, who was admitted and enrolled as an attorney of this Court on 7 September 2010.
12. He has been practising as an attorney under the name and style of A J Masingi Attorneys since 4 March 2011 at 234 Van Erkom Building, 217 Pretorius Street, Pretoria and/or at 205 Masada Building, c/o Ramakoase Streets, Pretoria. Both these offices are vacated, and he is presently practising at 860 Mance Avenue, Mayville, Pretoria.
13. The name of the respondent is still on the roll of legal practitioners of this Court and this Court has jurisdiction to hear the application.

THE LAW: URGENCY:

14. Section 43 of the LPC Act provides: "Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain urgent interim relief"
15. In the matter of *The Law Society of the Northern Provinces v Morobadi* (1151/2017) [2018] ZASCA 185(11 +December 2018) at para 25 the Supreme Court of Appeal held: "In general, it is correct that the Council may proceed with the application for the striking off of the applicant for his or her suspension from practice without pursuing a formal charge before a disciplinary committee if in its opinion, having regard to the nature of the charges, a practitioner is no longer considered to be a fit and proper person."
16. The main complaint from the respondent is that the matter is not urgent as the decision had been taken on 17 April 2023 by the LPC to institute the present application. According to the respondent no case for urgency was presented to the Court. The applicant's counsel referred the Court to the continuing complaints against the respondent. The last complaint was received by the applicant on 30 June 2023. I cannot find that there has been an unreasonable delay in launching the application.

17. If I apply the provisions of section 43 of the LPC Act and the dictum in Morobadi's case I find that the matter is urgent notwithstanding the delays. Although I am not dealing with the review application, it is clear from the provisions of section 43 and the dictum in the Morobadi case that the LPC need not have conducted a disciplinary enquiry before approaching the Court for the relief it is requesting.
18. It is trite that in an application for removal or suspension of a legal practitioner from practice a three-stage enquiry is involved to decide whether the applicant had shown on a balance of probabilities that the legal practitioner should be suspended or struck off the roll of legal practitioners as set out in *Summerley v Law Society, Northern Provinces* 2006(5) SA 613 (SCA).
19. The first stage is to decide whether the offending conduct has been established on a balance of probabilities. The second is to determine whether the conduct of the respondent is of such a nature that he is no longer a fit and proper person to practise as an attorney if his conduct is compared to that expected from an attorney. The third stage is to determine whether the respondent should be removed from the roll of attorneys or whether an order for suspension for a period will suffice if all the circumstances are considered.

BACKGROUND:

20. The LPC brought this application on an urgent basis, inter alia, upon a receipt of a complaint by a certain Ms Bopape. As a result of the complaint an investigation was conducted into the affairs of the respondent in terms of section 37(2) (a) of the LPC Act.
21. The investigation was done by Mr Philasande Nyali, a chartered accountant, who is employed as an auditor in the LPC's Risk and Compliance Unit.
22. Mr Nyali submitted a report containing his findings after inspection of the respondent's accounts and other documents.
23. He sets out that he had great trouble to get the respondent to assist him and for the respondent to provide all the necessary documents as requested.
24. On 3 March 2022 he had a meeting with the respondent and provided the respondent with a list of all the information he sought from the respondent. On 24 March 2022 the respondent delivered certain documents, but some documents were outstanding.
25. On 29 March 2022 Mr Nyali reminded the respondent that certain documents were outstanding. On 11 May 2022 the respondent requested an additional two weeks to supply the documents.
26. On 9 June 2022 Mr Nyali once more sent the respondent a reminder and set the date of 17 June 2022 for the respondent to supply the documents. Once more the respondent had an excuse and informed Mr Nyali that he was ill and would comply in the first week of July 2022.

27. On 12 July 2022 Mr Nyali once more requested the documents, to no avail.
28. On 12 August 2022 the respondent informed Mr Nyali that he was locked out of his office due to non-payment of his rent. He informed Mr Nyali that he would provide the requested documents on 31 (sic) September 2022.
29. He eventually delivered the documents to Mr Nyali on 3 November 2022- 8 months after he had been requested to do so. He had been stalling and not co-operating with Mr Nyali for 8 months.
30. The respondent was very reluctant to co-operate with Mr Nyali and only through the perseverance of Mr Nyali did the respondent eventually comply.
31. At inspection of the accounts, bank accounts and books Mr Nyali found that on 4 June 2020 Ms Bopape, who had laid the complaint against the respondent at the LPC, had deposited R 350 000.00 into the trust account of the respondent. This was paid as a deposit for the purchase of a property. At that time, before the R 350 000.00 was deposited into the trust account of the respondent, the balance in the trust account was R54.88.
32. On 30 July 2020 the balance in the trust account was R100 054.88. Between 4 June 2020, when the amount was deposited in the respondent's trust account, and 30 July 2020 payments were made to third parties in the amount of R 158 445.12.
33. An amount of R 91 500.00 was paid from the trust account to the respondent's business account. This is patently not allowed as the only work the respondent had done for Ms Bopape was to draft an offer to purchase. He had transferred money to his business account from his trust account which was not due to him.
34. The respondent offered to repay Ms Bopape in two instalments, which never took place.
35. On 28 December 2020 there was only R 5000.00 of Ms Bopape's initial deposit of R 350 000.00, left in the trust account.
36. The respondent contended he could not repay her as he had insufficient funds.
37. This is clearly not true, as on 21 May 2021 the Road Accident Fund had paid him more than R 1,9 million. He did not use that money to repay Ms Bopape, but she had to wait another 6 months to be repaid.
38. He only repaid Ms Bopape on 11 November 2022, more than 2 years after he had received her money and used it for his own purposes.
39. The only probable conclusion this Court can come to is that as 10 November 2022 there was a deficit of R 340 000.00 in the respondent's trust account. The applicant had proved on a balance of probabilities from the respondent's own account that he had misappropriated at least R 340 000.00.

40. In *Vassen v Law Society of Cape of Good Hope* [1998] ZASCA 47; 1998 (4) SA 532 SCA at p 537F-G the Court characterized the profession of an attorney as: "In this regard it must be borne in mind that the profession of an attorney, as of any officer of the Court is an honourable profession which demands complete honesty, reliability, and integrity from its members; and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly. When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that for which it is being held, and that it will be available to be paid to the persons on whose behalf it is held whenever it is required."

The respondent's version is that the client, Ms Bopape had verbally agreed that he could pay the seller R10 000.00, and R140 000.00 to the agent for commission, as well R45 000.00 to the agent. This does not ring true as the agent then received almost half of the purchase price as commission. It can be expected from an attorney, transferring large amounts of money, to have written instructions from his client.

41. According to the respondent he had not been practising without a Fidelity Fund Certificate- he declared that he was just not able to print it. This despite not obtaining an unqualified audit report for 2021. Although the audit report for 28 February 2022 was unqualified, it cannot be accepted as there was still a deficit of R 340 000.00 in the trust account at the time.
42. It must be mentioned that this was not the same auditor that had issued the qualified audit report in
2021. Mr Nyali is of the opinion that the auditor that had submitted the unqualified audit report on 28 February 2022 should be reported as he could not have issued an unqualified audit report as there was still a deficit in the trust account of R 340 000.00.
43. It is quite clear from the evidence of Mr Nyati that money has been misappropriated in the amount of R 340 000.00. The respondent had not managed Ms Bopape's affairs "meticulously and honestly"
44. The respondent responded with a bare denial and indicated that the money was repaid and Ms Bopape had withdrawn her complaint. The fact that the respondent had repaid the money, but only in November 2022 confirms the evidence by Mr Nyati that there had been a trust deficit in 2021 and again in 2022, until 10 November 2022. If the money had been paid to the agents at the behest of Ms Bopape, as claimed by the respondent, it is strange that the respondent repaid her. His defence, surely, would have been that he does not owe the money as she had agreed that he can pay the agents such large sums of money.

45. Furthermore there is no explanation for the large amount of R 91 500.00 that he had transferred to his business account without having any reason to do so. There is no explanation as to why his trust account only had R 5000.00 on 28 December 2020.

46. The applicant placed additional facts before Court.

46.1 On 5 December 2022 a complaint was received from Mr C Tshishonga, who claimed that he had deposited R3000.00 for the respondent to assist him with a claim at the Road Accident Fund. The respondent did not reply to the applicant's query in this regard.

46.2 Lechopho Investment Holdings complained to the applicant on 28 February 2023 that the respondent had to refund the amount of R250 000.00 paid to him for a conveyancing transaction, as the property was sold to another person. The complaint was once more referred to the respondent. He was requested to reply on or before 31 March 2023, but no response was received.

46.3 On 11 May 2023 the applicant received a further complaint in connection with a conveyancing transaction where Mr MS Rachidi complained that he had deposited R 250 000.00 into the business account of the respondent and had no feedback regarding the transaction for 10 weeks.

46.4 A further complaint was received on 12 May 2023 from Mr P E Setati. The complainant alleges that he had paid R 170 000.00 on 1 March 2023 for the sale of a property. Due to the respondent not giving any feedback, he contacted the seller of the property who denied selling the house.

46.5 On 25 May 2023 Ms M A Mphelane complained that she had paid an amount of R 450 000.00 to the respondent for the transfer of a property on 15 February 2023. The respondent has not communicated with her since then.

46.6 On 26 June 2023 Mr Makhaza complained that in February 2023 he had paid the amount of R 170 000.00 into the respondent's account for a conveyancing transaction. Nothing has been done since then.

46.7 On 30 June 2023 Mr Z Mathonsi laid a complaint against the respondent that he had deposited R 350 000.00 in the respondent's account with the instruction to pay the conveyancer, Mr Mokwatlo, which was not done.

47. In addition to these complaints the respondent is in arrears with his membership fees and owes the applicant R 26 842.00.

48. The applicant does not rely on these complaints to prove a case against the respondent on a balance of probabilities but submits that the misappropriation of Ms Bopape's funds is sufficient reason to have the respondent removed from the roll of attorneys. I do agree with this submission as there has been misappropriation of funds, a reluctance to assist the LPC, a failure to pay his membership fees and practising without a Fidelity Fund Certificate. The importance of the Fidelity Fund Certificate is that if an attorney practises without a Fidelity Fund Certificate, he places the public, who makes use of his services, at risk.

49. The respondent is thus guilty of contravening the following provisions of the LPA, the code of Conduct and the LPC Rules:

49.1 Sections 84(1) and 84(2) of the LPA, in that he is practising without being in possession of a Fidelity Fund Certificate, and while practising as such, receives and accepts fees, rewards and disbursement from clients;

49.2 Rule 54.14.8 of the LPC Rules in that he failed to ensure that the amount of money in the trust banking account at any date, is not less than the total amount of credit balances of trust creditors;

49.3 Rule 54.14.10 of the LPC Rules in that he failed to report immediately in writing, to the applicant that the total amount of money in his trust bank account, was less than the total amount of credit balances;

49.4 Rule 54.14 14.2 of the LPC Rules in that he transferred funds from the trust account to the business account which were not due to the firm;

49.5 Section 3.1 of the Code of Conduct in that he failed to act with the highest standard of honesty and integrity;

49.6 Section 3.3 of the Code of Conduct in that he failed to treat the interests of clients as paramount;

50. I find that the respondent is guilty of all these transgressions which are all serious. More so where his trust account was used to the detriment of his clients. His conduct is unprofessional, dishonourable, and unworthy conduct of an attorney. He is not a fit and proper person to practise as an attorney if his conduct is compared to what is expected from an attorney. The Court has a discretion to decide whether to suspend or to strike the respondent's name from the roll of attorneys.

51. Due to the seriousness of the transgressions by the respondent the Court is of the opinion that the respondent's name should be struck off the roll of attorneys to safeguard the unsuspecting public.

52. In the result the following order is made:

The attached draft order marked "X" is made an order of Court.

C PRETORIUS

JUDGE OF THE HIGH COURT

Date of Hearing: 7 September 2023 Date of Judgement: 13 September 2023 Appearances:
Applicant's counsel: LR Modiba Respondent's counsel: Attorney CP Fourie

X

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

PRETORIA 7 SEPTEMBER 2023

BEFORE THE HONOURABLE MADAM JUSTICE PRETORIUS

Case No: 2023 - 077988

In the matter between: SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant And JACOB ABEL MASINGI Respondent

ORDER

After having considered the papers and having heard the legal representative for the applicant:

IT IS ORDERED

1. That in terms of rule 6(12)(a) of the uniform rules of court, this Honourable Court dispenses with the forms and service provided for in the uniform rules of court and disposes of this matter at such time and place and in such manner and in accordance with such procedures as it deems fit.
2. That the name JACOB ABEL MASINGI, the respondent, be struck from the roll of attorneys of this Honourable Court.
3. That the respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court.
4. That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraph, within two
(2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.
5. That the respondent be prohibited from handling or operating on his trust account(s).
6. That Esther Pillay-Naidoo, the acting director, Gauteng provincial office of the applicant, or any person nominated by her, in her capacity as such, be appointed as curator bonis ("curator") to administer and control the trust account(s) of the respondent, including accounts relating to insolvent and deceased estates, and any deceased estate, and any estate under curatorship connected with the respondent's practice as an attorney and including, also the separate banking accounts opened and kept by the respondent at a bank in the Republic of South Africa in terms of section 86(1) of the Legal Practice Act ("LPA"), and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4), in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-section, on in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the "trust accounts"), with the following powers and duties:

6.1 immediately to take possession of the respondent's accounting records, records, files and documents as referred to in paragraph 7 below, and subject to the approval of the Board of Control of the Legal Practitioners Fidelity Fund ("Fund"), to sign all 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 were acting at the date of this order;

6.2 subject to the approval and control of the Fund, and where monies had been paid incorrectly and unlawfully from the trust account(s), 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 monies held, received and/or invested by the respondent, in terms of section 86(1) and/or section 86(3) and/or section 86(4) of the LPA (hereinafter referred to as "trust monies" or "trust money"), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the respondent was and may still have been concerned, and to receive such monies and to pay the same to the credit of the trust account(s);

6.3 to ascertain from the respondent's accounting records the names of all persons on whose account the respondent appear to hold or to have received trust monies (hereinafter referred to as "trust creditors"), and to call upon the respondent to furnish her, within 30 (thirty) days of the date of service of this order, or such further period as she may agree to in writing, with the names, addresses and amounts due to all trust creditors;

6.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as she may require to enable her, acting in consultation with, and subject to the requirements of the Fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the respondent and, if so, the amount of such claim;

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

6.6 having determined the amounts which she considers are lawfully due to trust creditors, to pay such claims in full, but subject to the approval of the Fund;

6.7 in the event of there being any surplus in the trust account(s) of the respondent, 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) 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 referred to in paragraph 13 below, 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 all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Fund, to the respondent, if he is solvent, or, if the respondent is insolvent, to the trustee(s) of the respondent's insolvent estate;

6.8 in the event of there being insufficient trust monies in the trust banking account(s) of the respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors, alternatively to pay the balance to the Fund;

6.9 subject to the approval of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist her in carrying out her duties as curator; and

6.10 to render from time to time, as curator, returns to the Fund showing how the trust account(s) of the respondent has been dealt with, until such time as the Fund notifies her that she may regard her duties as curator as terminated.

7. That the respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:

7.1 any monies received, held or paid by the respondent for or on account of any person while practising as an attorney;

7.2 any monies invested by the respondent, in terms of section 86(3) and/or section 86(4) of the LPA;

7.3 any interest on monies so invested which was paid over or credited to the respondent;

7.4 any estate of a deceased person, or an insolvent estate, or an estate under curatorship administered by the respondent, whether as executor, or trustee, or curator, or on behalf of the executor, trustee or curator;

7.5 any insolvent estate administered by the respondent as trustee, or on behalf of the trustee, in terms of the Insolvency Act, 24 of 1936;

7.6 any trust administered by the respondent as trustee, or on behalf of the trustee, in terms of the Trust Properties Control Act, 57 of 1988;

7.7 any company liquidated in terms of the Companies Act, 71 of 2008, administered by the respondent and/or on behalf of the liquidator;

7.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the respondent and/or on behalf of the liquidator; and

7.9 the respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 6 above, provided that, as far as such accounting records, records, files and documents are concerned, the respondent shall be entitled to have reasonable access to them, but always subject to the supervision of such curator or her nominee.

8. That should the respondent fail to comply with the provisions of the preceding paragraph of this order, on 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 accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.
9. That the respondent be and is hereby removed from office as -
 - 9.1 executor of any estate of which the respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, 66 of 1965, or the estate of any other person referred to in section 72(1) thereof;
 - 9.2 curator, or guardian of any minor, or other person's property in terms of section 72(1), read with section 54(1)(a)(v), and section 85 of the Administration of Estates Act, 66 of 1965;
 - 9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, 24 of 1936;
 - 9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, 71 of 2008
 - 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, 57 of 1988;
 - 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, 69 of 1984; and
 - 9.7 administrator appointed in terms of Section 74 of the Magistrates' Court Act, 32 of 1944.
10. That the curator shall be entitled to:
 - 10.1 hand over to the persons entitled thereto all such records, files and documents, provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the respondent;
 - 10.2 require from the persons referred to in paragraph 10.1 above, to provide any such documentation or information which she may consider relevant in respect of a claim or possible or anticipated claim, against her and/or the respondent, and/or the Fund in respect of money and/or other property entrusted to the respondent, provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
 - 10.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and
 - 10.4 wind-up the respondent's practice.
11. that, if there are any trust funds available, the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, 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, 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.

12. That a certificate issued by the Fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

13. That the respondent be and is hereby directed.

13.1 to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the respondent;

13.2 to pay the reasonable fees and expenses of the curator;

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

13.4 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

13.5 to pay the costs of the application on the scale as between attorney.

BY ORDER

Attorney for Applicant: CP FOURIE FOURIEFISMER INCORPORATED cpfourie@fsf.co.za 082 8811737

DISCLAIMER: "This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter in Case Lines by the Judge of his/her Secretary/Registrar. The date of this Order is deemed to be 13 September 2023."

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Prepared on 14 October 2026 · Esheria