

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Ramdin (26408/2021) [2024] ZAGPPHC 633 (25 June 2024) [2024] ZAGPPHC 633

COURT

North Gauteng High Court, Pretoria

BEFORE

Mooki, Matthys

CASE / FILE NUMBER

26408/2021

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REPUBLIC

OF SOUTH AFRICA

IN

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

Case No: 26408/2021

Reportable: No

Of interest to other

Judges: No

Revised: No

Date: 25 June 2024

SIGNATURE

In the matter between: THE SOUTH AFRICAN LEGAL
PRACTICE COUNCIL
Applicant
and
RADHIKA SINGH
RAMDIN
Respondent

JUDGEMENT

MOOKI J (MATTHYS AJ concurring):

1

The Legal Practice Council (“the LPC”) seeks an order that the respondent be struck from the roll of legal practitioners. The respondent was suspended from practice on 22 June 2021.

2

The respondent sought to appeal the order suspending her from practice. The LPC in turn brought an application to have the order remain in operation. Basson J dismissed the application for leave to appeal and allowed the suspension order to remain in operation.

3

The LPC filed a supplementary founding affidavit. The affidavit included a report by the curator appointed in terms of the 22 June 2021 order.

4

The respondent did not file a further affidavit to address issues raised in the supplementary founding affidavit. She also did not file submissions. The Sheriff notified her of the date for the hearing. The respondent was not in court when the matter was heard.

5

The LPC says the following encapsulates its case for the striking off of the respondent:

5.1 There is a minimum trust shortage of R7 310 525.33.

5.2 The respondent did not report the trust deficit to the LPC.

5.3 The respondent was grossly negligent; alternatively, reckless in handling trust funds.

5.4 The respondent failed to cooperate with the LPC and an inspector appointed by the LPC to consider the respondent’s accounting and practice records.

5.5 The respondent failed to make proper accounting records available.

5.6 The respondent acted dishonestly and without integrity.

6

The respondent was admitted to practice as an attorney on 24 April 2007. She became a conveyancer on 25 February 2008 and a Notary Public on 22 January 2009. She practised as the sole director of “Ramdin Singh Attorneys” at the time of the complaints.

7

The LPC relies on events specified below as the foundation for striking the respondent off the roll of practitioners.

Complaints against the respondent

8

Mr Ibrahim and his companies, Alkaram Investments CC and SHTM Investments (Pty) Ltd purchased several properties and paid deposits into the respondent’s trust account.

9

Mr B Patel, an estate agent, approached Mr Ibrahim in April 2017, telling him that the Johannesburg Property Company (“JPC”) had authorised him to sell a property in Lenasia. They concluded an agreement on that property on 20 April 2017.

10 Mr Ibrahim and his attorney met with Mr Patel, Ms Razia Lewis, and Ms Roslyn Dons in relation to land owned by the City of Johannesburg

(“the City”) which Mr Ibrahim understood was for sale. Ms Lewis and Ms Dons represented that they were employees of the City and were authorised to sell properties on behalf of the JPC. Mr Patel, Ms Lewis and Ms Dons told Mr Ibrahim at the meeting that the City engaged the respondent’s firm to attend to the transfer of the properties.

11 The respondent confirmed to Mr Ibrahim that her firm was the transferring attorneys for the City. She wrote to Mr Ibrahim’s attorney on 23 June 2017, with a copy to Mr Patel and Ms Lewis, recording the following:

Dear madam, (sic)

A meeting of 22 June 2017 has reference.

We confirm that as per the meeting we have referred the following to our client:

1. That the balance of the deposit will be paid in Ramdin Singh attorneys trust account.
2. The balance of the purchase price paid in Dangors attorneys trust account. A guarantee alternatively an undertaking to pay on registration will be provided by Dangors att. (sic).

We hereby confirm that these conditions are acceptable to our client.

We trust you find the above in order.

Regards

Radhika Ramdin.

12 Mr Ibrahim subsequently concluded further multiple agreements to buy land and deposited a total amount of R6,423,300.00 into the respondent's trust account.

13 Mr Ibrahim requested progress reports from the respondent. He did not receive the reports. He then asked for meetings with the respondent,

for his attorneys to inspect documents pertaining to the transactions. The respondent refused the meetings.

14 Mr Ibrahim found out sometime about 24 June 2019 that Ms Dons was not an employee of the City. Mr Ibrahim then demanded repayment. The respondent, copying Ms Dons and Ms Lewis, wrote to Mr Ibrahim's attorney on 24 June 2019, as follows:

Dear Madam,

We have been advised by the client of his intention to cancel the various transfers.

Kindly provide us with a formal cancellation letter to enable us to start processing the request.

We trust you find the above in order and look forward to receiving the necessary.

Regards,

Radhika Ramdan

15 Dangor attorneys replied to the respondent on 24 June 2019, as follows:

VARIOUS TRANSFERS

1. We act for SHTM Investments (Pty) Ltd, Alkaram Investments CC and Mr SETA Ibrahim (our clients).
2. Our clients entered into various agreements of sale to purchase numerous properties wherein you were acting as the attorney representing the City of Johannesburg, many of which were entered into more than two years ago.
3. Our clients have on numerous occasions requested documentary evidence of your authority to act on behalf of the council, copies of transfer documents, copies of transfer duty receipts and rates clearance certificates, which you have to date not produced.
4. We have on numerous occasions requested meeting with you which you refused.
5. You have further failed to provide any reasonable explanation for the delays in these matters, some of which have been more than 2 years.

6. In the circumstances, our clients require that all monies paid into your trust account by them, together with interest, be paid into our trust account (details attached) by no later than close of business on 25 June 2019. Our trust account information will be verified by text message sent to your cell phone.
7. Furthermore, all statements reflecting the investment of these monies are to be sent to us by no later than 25 June 2019.
8. Should this not be done, our clients reserve the right to pursue any and all action against you including but not restricted to reporting the matter to the relevant Law Society.
9. This letter is sent without prejudice and our clients' rights remain reserved in toto.

Yours faithfully

Dangor Attorneys

Shaneema Dangor

16 The respondent undertook to repay the deposits. She wrote at some point that payment would be made "shortly" because she was following procedures for the council. She later paid R389,500.00. This was the only repayment.

17 Mr Ibrahim subsequently laid a charge with the police against the respondent, Ms Lewis, and Ms Dons. Mr Ibrahim also lodged a complaint with the LPC on 11 July 2019.

18 A similar complaint against the respondent was made on behalf of Mr Mohammed Jada and his associated companies ("the Jada complaint"). The Jada complaint was made on 21 October 2019.

19 The Jada complaint also pertained to sales of land that was said to be owned by the City or by the JPC. Mr Patel, Ms Lewis and Ms Dons were also involved. The respondent's practice was also indicated as the transferring attorneys.

20

Deposits were made into the respondent's trust account, as in the Ibrahim transactions.

21 The complaint to the LPC records, amongst others, that:

"1. [...]

4. The aforesaid agreements were entered into by our clients through the sellers (sic) purported agent Mr Bashir Patel ("Mr Patel") of BA properties. We are advised by Mr Patel that he was duly mandated to act on behalf of the sellers by Ms. Ramdin Singh ("Ms Singh"), Ms Razia Lewis and Ms Roslyn Mary Dons ("the sellers (sic) representatives") purported to have a mandate with the sellers in this regard. It must be noted that the nominated transferring attorneys for the sellers is Ramdin Singh Attorneys ("transferring attorneys") whose sole director is Ms. Singh.

5. Accordingly, our clients, in terms of the agreements, effected payment by way of electronic funds transfer of the requisite deposits for the purchases to the transferring attorneys trust account,..., as follows.

5.1 R 350 000 00 on 28 September 2017;

5.2 R 300 000 00 on 3 October 2017, and

5.3 R 400 000 00 on 5 December 2017.

6. During the course of early 2018 and May 2019 the transfers were not effected to our clients and Ms Singh would revert and advise that the delays were occasioned due to documents not being received from the sellers, that she is awaiting the rate clearances from the council and that she was waiting on the South African Revenue Service to obtain transfer duty receipts.

[...]

8. We were alerted to the suspiciousness of the transfers when Ms Singh advised in an email dated 20 August 2019 that the transfer documents were ready for lodgement at the Deeds Office and that she will provide the tracking numbers once lodgement took place. This was suspicious as our client had not signed any other documents besides the agreements and which is common practice that the relevant transfer documents are to be signed before any lodgement can take place. As a result, we addressed an email dated 22 August 2019 to Ms Singh and requested copies of all signed transfer documents, transfer duty receipts and rates clearance figures. To date we have not received an adequate response and the information sought from Ms Singh. In an email dated 27 August 2019 Ms Singh advised that her clients have indicated that should our client wish to cancel the agreements she would commence with refund process and refund the deposit.

[...].

10. The purpose of this letter is to formally lodge a complaint of misconduct with the Legal Practice Council against Ms Singh as the transferring attorney [...].

22 Mr Jada had requested the respondent to repay a deposit in the sum of R1 050 000.00.

23 A further complaint was made on behalf of FMR Gas (Pty) Ltd ("the FMR Gas complaint"). The complaint was lodged with the LPC on 15 March 2021. The complaint was essentially the same as the other complaints: the respondent's practice was indicated as the transferring attorneys for property owned by the City or by the JPC. Payments were made into the respondent's trust account. There was no transfer of properties. The respondent did not refund the deposits.

24 Part of the FMR Gas complaint recorded that:

16. Ms Singh also failed to act courteously and with honour in that she has completely disregarded and refused to honestly engage our offices in order to facilitate the release of our Client's deposited monies and resolve this matter."

18. Miss Singh has potentially dissipated trust monies held on behalf of our Client without instruction to do so and indeed dissipated said trust monies contrary to the instruction of it release to our Client.
22. Accordingly, our Client requires that the Legal Practice Council:
 - a. Conduct, on an urgent basis, an audit of Ramdin Singh Attorneys' trust account;
 - b. Fully investigate this matter; and
 - c. Institute whatever action and/or proceeding against the relevant parties (Miss Singh and Ramdin Singh Attorneys), as it deems necessary to ensure that the integrity and ethics of the legal profession upheld.

25 The LPC authorised Mr Deleeuw Swart, an employee in the LPC's Risk and Compliance Department, to inspect the respondent's records, practice affairs and to investigate complaints against the respondent.

26 Mr Swart made various attempts to contact the respondent. He wrote to the respondent during the period 14 January 2020 and 19 January 2021. She replied twice during this period. She replied on 16 March 2020, saying she was out of town and that she was available to meet after Easter. She sent Mr Swart a text message on 19 August 2020, saying she had contracted Covid and would contact Mr Swart once she was able to do so. Mr Swart later enquired about her health. She did not reply. Mr Swart never met the respondent.

27 Mr Swart eventually submitted a report to the LPC. The respondent had not cooperated with Mr Swart. He reported that he was unable to inspect the firm's accounting records. He was also unable to investigate complaints regarding the firm's trust accounting records.

28 Mr Swart made the following primary findings, based on information that was already available to the LPC. The respondent had not submitted an accountant's report for the year ending 29 February 2020, in contravention of Rule 54.20. She also practised without a Fidelity Fund certificate from 1 January 2021.

29 Mr Swart referred to complaints by Mr Ibrahim and Mr Jada in his report. He identified several infringements by the respondents based on the complaints. Infringements included failure by the respondent to account to a client. Mr Swart concluded that the respondent's accounting records had to reflect a trust shortage because the respondent had not repaid the deposits complained of by Mr Ibrahim

and Mr Jada. He estimated that the shortage amounted to R7 310 525.33, considering the balance obtained by the LPC from the bank on 25 January 2021.

30 The respondent denied withholding deposits paid into her trust account. She averred that the LPC never told her of complaints against her, and that she first knew of the complaints in the application.

31 She contended that she transferred deposits held in trust to accounts nominated by the complainants, pursuant to a mandate given to her by the complainants. She averred that she confirmed her instructions with the complainants before making payments. The respondent did not address the LPC's averments pertaining to the FMR Gas complaint.

32 She denied practising without a Fidelity Fund certificate. She maintained that she had certificates during the periods of the transactions that form the subject of complaints against her.

33 She admitted her non-cooperation with Mr Swart, saying she "may have been complacent in meeting with Mr Swart." That was because she took ill from Covid and that there was no malice in her not meeting Mr Swart.

34 She disputed Mr Swart's contentions on the audited financials of her practice, saying Mr Swart's contentions were inaccurate.

She pointed out that she applied for the late submission of audited financials.

35 She denied that there was a shortfall or a trust deficit. This was because funds had not been declared because Mr Ibrahim and Mr Jada mandated her to pay over the funds to nominated bank accounts; meaning that the funds were not held in trust and did not have to be declared.

Analysis

36 The respondent did not file a supplementary affidavit to address averments in the LPC's supplementary founding affidavit. The LPC did not file a reply to the respondent's affidavit.

37 The respondent is shown to have been a party to a scheme, together with Mr Patel, Ms Dons and Ms Lewis. The object of the scheme was to represent to the public that members of the scheme were associated with the City of Johannesburg or with the Johannesburg Property Company. The scheme represented that its members were authorised to sell property owned by the City or by the JPC.

38 Mr Patel used his estate agency to initiate contact with a member of the public. Ms Dons and Ms Lewis were previously employees of the City. They were therefore familiar with the systems and "language" of operations of the City. They relied on their knowledge as former employees of the City to give comfort to would-be-buyers. The respondent was an attorney and a conveyancer. She relied on these qualifications to cement to would-be buyers that they would be able to take transfer of properties.

39 The respondent agreed to use her practice as a conduit to swindle money from persons who believed that they had concluded genuine agreements to purchase property. Her contemporaneous exchanges with the purchasers or their representatives give the impression that the City was her client. Her multiple references in correspondence to her "client" (meaning

the City) having to give approvals or the like, gave comfort to purchasers that the City or the JPC had indeed nominated her practice as transferring attorneys. The respondent knew that neither the City nor the JPC were ever her “client” in relation to deposits into her trust account for properties that are the subject of complaints against her.

40 The respondent wrote to SHTM Investments (Pty) Ltd (one of the companies in which Mr Ibrahim has an interest) on 9 March 2018. The subject of the correspondence is “TRANSFER: JOHANNESBURG PROPERTY COMPANY / SHTM INVESTMENTS (PTY) LTD.” She recorded that her practice received a deposit of R 1 000 000.00. She requested the company to furnish a guarantee “for credit of account of RAMDIN SINGH ATTORNEYS, ..., in the amount of R939 500.00 payable at: VIA ACB on registration.” She recorded that the balance of the purchase price was “... to be paid in cash into the trust account in order to pay transfer duty to SARS.”

41 The above correspondence is an example of the respondent falsely representing that the Johannesburg Property Company had engaged her firm as transferring attorneys.

42 The respondent, once she was pressed to show results, threatened to cancel transactions and to “repay” monies paid into her trust account. This is illustrated by what is recorded in paragraph 8 of the cover letter in the Jada complaint. The respondent had been painted into a corner at that point because she knew that there were no properties that could be sold.

43 The respondent was wilful in being a party to a scheme to effectively defraud members of the public. She misled members of the public into believing that her firm was the transferring attorneys for the sale of land owned by the City or by the JPC.

44 The respondent misleads the court in this application. She says she paid monies deposited in her trust account after she had received

confirmation to make payments. There is no support for her averment that “I furthermore confirmed my instructions in writing with Mr Ibrahim, before make (sic) the necessary payment.” The respondent would have provided evidence of the written instruction if such an instruction existed.

45 There is a shortfall in the respondent’s trust account. She did not report the shortfall. I do not accept that funds were no longer held in her trust account because Mr Ibrahim and Mr Jada mandated her to pay the funds to nominated “government bank accounts.” She did not provide support for this claim. She also never mentioned this in contemporaneous exchanges. She never suggested, when pressed to repay the deposits, that she had already paid “to nominated government bank accounts” acting on a mandate given to her by Mr Ibrahim or by Mr Jada.

46 The respondent misconstrued the complaint against her in relation to practising without a Fidelity Fund certificate. She avers that she was issued the certificates during the period of events of the complaints. That is not the complaint against her. The LPC complains

that she practised without a Fidelity Fund certificate from 1 January 2021.

47 The respondent does not meet the substance of the complaint regarding her firm's audited financial statements. She merely states that Mr Swart did not meet with her and that Mr Swart was speculating in what he says about the financial statements. It is insufficient for the respondent to say "I respectfully submit that Mr Swarts (sic) contentions are inaccurate, in various respects", without giving a detailed explanation why that is so.

48 The respondent is duty-bound to cooperate with the LPC. She failed her duty. I do not accept that she could not meet with Mr Swart because of ill-health. Mr Swart spent the better part of a year writing to the respondent to schedule a meeting. The respondent essentially ignored his requests. The respondent mentioned ill-health as an excuse once. She ignored correspondence from Mr Swart when he enquired after her health. I also do not accept her explanation that Covid-19 made it impossible to meet with Mr Swart. She did not have to meet Mr Swart in person. She would have arranged a video-conference if she wanted to meet.

49 I find that the respondent is not a fit and proper person to remain on the roll of legal practitioners. Her conduct fell far short of what is required of a legal practitioner. She deceived members of the public that the City appointed her firm as the City's transferring attorney. This was calculated to advance a scheme essentially to defraud members of the public. She was also dishonest.

50 Having found the respondent to be dishonest, she is to be struck from the roll of legal practitioners:

'[...], if a court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal. Where dishonesty has not been established the position is . . . that a court has to exercise a discretion within the parameters of the facts of the case without any preordained limitations.'

51 It is not exculpatory that she now works in another law firm and that she does not handle trust funds. Her conduct as related in complaints against her cannot be discounted as past events of no consequence. It would be remiss to allow her to remain on the roll of legal practitioners given that conduct.

52 There are no exceptional circumstances that merit the court ordering a suspension. It bears noting that the respondent did not participate

in the application. She did not appear in court during the hearing. Her answering affidavit was terse, without addressing the substance

of the allegations against her. She glossed over the substance of complaints made against her. She did not file a further affidavit to address allegations following the report by the curator, which makes serious allegations of misconduct.

53 I am compelled to remark on the conduct of the LPC in relation to complaints against the respondent.

54 Mr Ibrahim lodged his complaint on 11 July 2019. The LPC did not notify the respondent of the complaint. The LPC only acted on the complaint when it authorised Mr Swart sometime in early 2020 to carry out an investigation. Mr Swart did not investigate the complaints. He did not contact Mr Ibrahim or Dangor Attorneys. He did not even seek bank statements to assess transactions in the respondent's bank accounts. The LPC obtained a bank statement on 25 January 2021. Mr Swart's report is dated 28 January 2021. Mr Swart's

"investigation" was limited to a mere recitation of Mr Ibrahim's complaint as notified to the LPC.

55 There was also no investigation of the complaint by Mr Jada. Mr Swart merely recited the contents of the complaint in his report.

56 The FMR Gas complaint was lodged with the LPC on 15 March 2021. The complainant gave a detailed account of alleged misconduct by the respondent. The complainant requested the LPC to "fully investigate this matter." The LPC did nothing. The LPC merely included the complaint as part of this application.

57 The FMR Gas complaint is not made under oath. There is no confirmatory affidavit by any person associated with the allegations in that complaint. The LPC did not examine whether the issues detailed in the complaint are factually correct. It is not understood how the court is expected to make findings of fact on such information.

58 The LPC invokes section 43 of the Legal Practice Act, 28 of 2014, to justify approaching the court for relief on an urgent basis.

The section provides that a disciplinary body "must inform" the LPC with the view to the LPC instituting urgent proceedings in the High Court to suspend a practitioner or to obtain alternative interim relief where a disciplinary body is satisfied that a legal practitioner has misappropriated monies or is guilty of misconduct.

59 There was no disciplinary body as contemplated in section 43 in relation to the respondent. The LPC could not invoke section 43 for urgent relief in this application.

60 The LPC says the application is urgent also because the respondent possessed funds meant for her clients and that the funds do not

appear in her trust account. The other basis to urgency is said to be because the respondent was practising without a Fidelity Fund certificate "and seemingly treats deposits into the trust account as her personal money." The LPC, in its submissions,

stated that the respondent continued to practice despite the suspension order of 22 June 2021.

61 There is no support that the respondent continued to practise despite the suspension order of 22 June 2021. There is no averment in affidavits on behalf of the LPC that the respondent continued to practise in breach of the 22 June 2021 order.

62 There is also no support that the respondent “seemingly treats deposits into the trust account as her personal money.” There is no averment in affidavits for the LPC on how the respondent “seemingly treats deposits into the trust account as her personal money.” It is puzzling, as is the submission that the respondent continued to practise despite the court order, for the LPC to make this grave assertion without providing support.

63 It took almost two years before the LPC brought the application following complaints made to it. The LPC did not investigate the complaints during that period.

64 The LPC seeks to justify the delay by saying “... it is important to keep in mind that the function of the applicant is a time-consuming one, one that needs to be done in a precise and exact fashion, and one that determines the livelihood of people in this profession, and should not be done in haste.” This justification does not hold. The Ibrahim complaint was not investigated between July 2019 and 28 January 2021, when Mr Swart completed his report. The same applies to the Jada complaint (received on 21 October 2019). Nothing was done with the FMR Gas complaint.

65 The fact of Mr Swart spending almost a year seeking a meeting with the respondent does not justify the LPC bringing this application on an urgent basis. Mr Swart did not even interview the complainants. He did not seek bank statements to examine transactions in bank accounts known to the LPC. It was only on 25 January 2021, three days before Mr Swart signed-off on his report, that the LPC requested a statement from a bank.

66 The LPC cannot be said to be unaware, at any point, whether a legal practitioner has a Fidelity Fund certificate or not. This is a simple function of the LPC checking its own records. It cannot take the LPC some two years to say that a legal practitioner did not have a Fidelity Fund certificate, and then seek to use that as a basis for approaching the court on an urgent basis.

67 The delay by the LPC in attending to complaints will have a bearing on the practice in this division in which “law society”

matters are treated as urgent; together with the practice that the LPC is awarded costs on an attorney and client basis.

68 The way the LPC handles complaints does not warrant the LPC being privileged over other litigants by having LPC matters heard as urgent perforce. It also does not justify the court granting the LPC costs on a punitive basis as a matter of course. The LPC must, like any other litigant, justify why a matter is urgent.

69 I make the following order:

- (1) The respondent, Radhika Singh Ramdin, with identity number 8[...], is struck from the roll of legal practitioners kept by the applicant in terms of s 30(3) of the Legal Practice Act 28 of 2014.
- (2) The relief granted in the court order dated 22 June 2021 remains in effect.

(3) Paragraph 6 of the order dated 22 June 2021 is amended to now read as follows:

“6. That the Director/Acting Director, or any person nominated by him/her. of the Gauteng Provincial Office of the Applicant, be appointed as curator bonis”

(4) The respondent is directed:

- a. To pay the reasonable costs of the inspection of the respondent’s accounting records;
- b. To pay the reasonable fees and expenses of the curator.;
- c. To pay the reasonable fees and expenses of any person consulted by and/or engaged by the curator;
- d. To pay the expenses relating to the publication of this order or of its abbreviated version;
and
- e. To pay the costs of the application.

MOOKI J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree:

MATTHYS AJ

JUDGE (ACTING) OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearance

On behalf of the Applicant: A van der Westhuizen Instructed by: Dyason Inc. On behalf of the Respondent: No Appearance Date of Hearing: 16 April 2024 Date of

Judgement:

25 June 2024

[1]Summerley v Law Society of the Northern Provinces 2006

(5) SA 613 (SCA), para 21; Malan and Another v Law Society of the Northern Provinces [2008] ZASCA 90; 2009

(1) SA 216 (SCA), para 10

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