

SOUTH AFRICA / JUDGMENT

South African Legal Practice Council v Segaole (2977/2021) [2024] ZAGPPHC 1239 (28 November 2024) [2024] ZAGPPHC 1239

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis, Bam

CASE / FILE NUMBER

2977/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHERS JUDGES: NO

(3)

REVISED: NO

(4)

Date: 28 November 2024

Case Number: 2977/2021

In

the matter between:

SOUTH
AFRICAN LEGAL PRACTICE COUNCIL

Applicant

And

LERATO

MOSES SEGAOLE

Respondent

This

judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 28 November 2024.

JUDGMENT

COLLIS J (BAM J concurring)

INTRODUCTION

[1] The applicant before this Court is the South African Legal Council (Council). It acts as *custos morum* of the profession. Its function is to place facts concerning legal practitioners falling foul of the required conduct for consideration

by the Court with the resultant hearing being an inquiry into the officer's fitness to remain on the roll of practitioners.[1] Effectively, the Council fulfils the role of an *amicus curiae*. [2] There is therefore no lis between the Council and the practitioner concerned.

[2] As such it is its function to ensure that a practitioner practicing as an attorney must scrupulously observe and comply with the provisions of the LPA and the Rules and Code of Conduct promulgated thereunder.

[3] Furthermore, a practitioner being a member of a learned, respected and honourable profession when entering it, pledges himself with total and unquestionable integrity to society at large, the Courts and the profession.

[4] The present application is brought in terms of Section 44(1) of the Legal Practice Act (LPA). [3] The provisions of the LPA do not derogate in any way from the inherent power of the Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner.[4]

[5] The respondent before Court was admitted as a legal practitioner on 10 December 1996 and practices as an attorney for his own account under the name and style of Segaole Attorneys, in Johannesburg.

[6] On 9 June 2022 this Court suspended the Respondent from practicing as a legal practitioner(attorney). The Court granted a suspension order pending the finalization of the application for the striking of the respondent's name from the roll of legal practitioners (attorneys). The court appointed a curator bonis on whom the financial affairs of the respondent's practice vests, and it further granted ancillary relief. The proceedings before us concern the relief sought on the return date in respect of the previous order granted.

GENERAL PRINCIPLES

- [7] The image and standing of the profession are judged by the conduct and reputation of all its members and, to maintain this confidence and trust, all members of the profession must exhibit the qualities required of members of the profession at all times.
- [8] It is for this reason that the Court and the Council have a duty to act where an attorney's conduct falls short of what is expected and to curb the erosion of values in the profession. The protection of the public goes hand in hand with the Court's obligation to protect the integrity of the Courts and the legal profession. Public confidence in the legal profession and in the Courts is undermined when the strict requirements for membership to the profession are diluted.
- [9] It is trite that applications of this nature constitute a disciplinary enquiry by the Court into the conduct of the practitioners concerned. The proceedings do not constitute ordinary civil proceedings but are sui generis in nature.[5]
- [10] Upon the three-stage inquiry being held by the Court, if the Court finds that a practitioner (attorney) is not a fit and proper person to continue to practice as an attorney then that attorney must be removed from the roll.
- [11] If however, the Court has grounds to assume that after a period of suspension the practitioner will be fit to practice as an attorney in the ordinary course of events, it would not remove the attorney from the roll but rather order an appropriate suspension. This will be where the Court finds the attorney guilty of unprofessional conduct where such conduct does not make him/her unfit to continue to practice as an attorney. this does not mean that the Court is powerless. The Court may discipline the practitioner by suspending him/her from practice with or without conditions or by reprimanding the practitioner.[6]
- [12] Importantly, the facts presented to the Court should be considered in their totality and the Court must not consider each issue in isolation.[7] Although not binding to the court , the opinion or conclusion of the SALPC that a practitioner is no longer a fit and proper person to practice as an attorney carries great weight with the court.[8]
- [13] The question whether a legal practitioner is no longer a fit and proper person to practice as such as mentioned 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 Act.[9]

THE TEST

[14] The appropriate sanction, namely a suspension from practice or striking from the roll, also lies within the discretion of the

court.[10] In exercising its discretion the Court is faced with a three-stage inquiry as follows:

(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 practice. 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 practice as an attorney, then the only sanction will be to order his removal from the roll of practicing practitioners. If the Court is satisfied that the practitioner is still a fit and proper person to practice then other sanctions may be considered. This constitutes the third inquiry namely 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 will depend on factors such as the nature of the conduct complained of the extent to which it reflects upon the person's character or shows him to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately this is a question of degree. 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.[11]

[15] Our Courts, have repeatedly expressed themselves on the conduct required of practitioners in proceedings of this nature.[12] An approach to the proceedings is that a conduct that is contrary to these principles in itself constitutes unprofessional conduct and a separate inquiry is held regarding the substantive ground for a practitioner's removal from the roll or suspension from

practice.

[16] The following principles inter alia have crystalized themselves over the years:

16.1. When a practitioner receives an application for his suspension or striking, he should realize that the time for telling the truth has arrived.[13] A practitioner must from the outset declare the relevant facts fully and openly and not allow the truth to emerge gradually. The

practitioner should raise defenses in a manner that evince complete honesty and integrity.[14]

16.2. From the nature of disciplinary proceedings, it follows that the legal practitioner concerned is expected to co-operate and provide where necessary information to place the full facts before the court, to enable the court to make a correct decision. Broad denials and obstructionism have no place in disciplinary proceedings;[15]

16.3. Where allegations and evidence are presented against a legal practitioner, they cannot simply be brushed aside, the legal

practitioner concerned is expected to respond meaningfully to them and to furnish a proper explanation;[16]

16.4. A legal practitioner should not approach the proceedings as if it were criminal proceedings and, instead of meeting the allegations, rely upon bare denials without providing explanations; and

16.5. A legal practitioner should not, instead of dealing with the issues, launch an attack on the Council, accuse the accuser and seek to break down his/her controlling body.[17]

[17] It is also expected of practitioners when it comes to their engagements with the Council, to respond within a reasonable time to all communications which require an answer unless there is good cause for refusing to answer.[18]

[18] Practitioners are expected to respond timeously and fully to requests received from the Council for information and/or documentation which he or she is able to provide,[19] and to comply timeously with directions from the Council[20]and refrain from doing anything that may hamper the ability of the Council to carry out its functions.[21]

[19] The present application has been served before this Court on three previous occasions. At the first hearing the application was postponed to 9 June 2022, and certain dies were prescribed for the filing of further papers. At the second hearing on 9 June 2022, the respondent was suspended pending finalization of the application, and was ordered to show cause on or before 14 March 2023 why he should not be suspended for a period to be determined, alternatively, why his name should not be struck from the roll.[22] Further affidavits were exchanged after each hearing.

[20] Prior to the hearing set down on 14 March 2023, new information came to the attention of the Council that inter alia confirmed that the respondent's previous answers under oath were not honestly made and that he had been practicing during a previous period when he was not reflected as a practicing attorney. Further, that he has practiced contrary to the suspension order. The application was postponed sine die, the suspension order was maintained, dies for the filing of further papers were prescribed, and the issue of costs was reserved.[23] The further papers have been filed and the matter is ripe for hearing.

THE MERITS OF THE APPLICATION

[21] As per the Founding Affidavit, the Applicant's case is premised on a number of transgressions on the part of the Respondent. These complaints will individually be dealt with for the purposes of this judgment.

[22] It is the Applicant's case that the Respondent was admitted as a legal practitioner (attorney) on 10 December 1996. According to the records of the Council, until his suspension, the respondent was a sole practitioner, practicing for his own account under the name and style of Segaoale Attorneys in Johannesburg, Gauteng.[24] The respondent informed the Council that the practice was opened on 15 August 2019.

[23] The present application has as its genesis a complaint received from attorneys that acted as a correspondent firm for the respondent. The account of the correspondent the respondent had failed to pay. In addition, the respondent failed to respond to the Council on correspondence addressed to him in this regard. The Respondent's failure to submit auditor's reports to the Council, and him having practiced without being in possession of fidelity fund certificates. This complaint is of particular significance as it illustrates that the respondent was practicing for his own account well before he formally opened his practice on 15 August

2019. This without informing the Council thereof, he has been dishonest in the present proceedings and he has continued to practice notwithstanding the suspension order.

COMPLAINT: HUMAN LE ROUX MEYEROWITZ (HLRM)

[24] The respondent instructed HLRM to act as his correspondent firm in Bethlehem on 22 August 2016. HLRM executed their instructions and rendered an account in respect of its fees and disbursements. The respondent failed to pay the account thereafter, notwithstanding repeated attempts by HLRM to obtain payments from the respondent.

[25] As per the Answering Affidavit the respondent vehemently denies the majority of the allegations that are made with reference to this complaint. In this regard, he denies that:

25.1. He instructed HLRM to act as his correspondent in Bethlehem on 22 August 2016;

25.2 HLRM executed his instruction and rendered an account to the respondent in respect of his fees and disbursements;

25.3 He failed to pay HLRM's account and persisted in his failure;

25.4 He failed to respond to HLRM's demands and he failed to pay the outstanding account;

25.5. HLRM's telephone calls to the respondent did not bear fruit; and that

25.6. He, on two occasions, undertook to pay HLRM's account and failed to honour his undertakings.[25]

- [26] In the same affidavit however, he alleges that he has since paid the fees and disbursements of HLRM and that the matter was settled as confirmed by correspondence directed to the Council by the attorneys.[26]
- [27] In respect of this complaint, the respondent fails to take this Court into his confidence or to cogently explain the contradiction between his denial that he instructed HLRM and his confirmation that he paid the account of HLRM allegedly in 2019. This clearly flies in the face of his initial denial that he instructed HLRM and having given such an instruction to the correspondent, it gives credence to the veracity of the complaint.
- [28] Furthermore, the respondent does not dispute that HLRM addressed letters/emails/text messages to him from 17 January 2017 to 4 September 2017 demanding payment of their account.[27] He, however, denies that these efforts were not responded to and that they did nor bear fruit.[28]
- [29] He however provides no indication or evidence that the various correspondence addressed to him was ever responded to, and clearly the account on his version, was only paid well after HLRM's complaint to the Council. His denials are, therefore, not made in honesty.
- [30] In his Answering Affidavit, the respondent alleges that the account of HLRM was settled in 2019. This allegation however is inaccurate. HLRM's ledger account confirms that the funds were only received on 11 May 2020,[29] and this date accords with the letter by HLRM attached to the respondent's Answering Affidavit confirming such settlement.[30]
- [31] Here too the respondent does not provide any basis upon which he could allege that he had paid HLRM during 2019. His election to do so brings into question his honesty and integrity.
- [32] In terms of Rule 18.18 of the Code of Conduct, an attorney shall:
- “pay timeously, in accordance with any contractual terms or, in the absence of contractual terms, in accordance with the standard terms of payment, the reasonable charges of any legal practitioner, whether an advocate or an attorney, whom he or she has instructed to provide legal services to or on behalf of a client; such liability shall extend to every partner of a firm or member of an incorporated*
- practice, and if the firm is dissolved or the incorporated practice is wound up, liability shall remain with each partner or member, as the case may be, the one paying, the others to be absolved.”
- [33] Therefore, the respondent's failure to timeously pay HLRM amounts to misconduct.[31]
- [34] As per the Founding Affidavit, the applicant further alleges that at the time that the respondent instructed HLRM, he was reflected as a non-practicing attorney on the Council's records. According to the latter, the respondent did not practice as an attorney during the period 30 September 2011 to 31 July 2019 as his name appeared on the roll of non-practicing attorneys during the period in question.[32]

[35] The implication therefore, is that the respondent during the said period could not have instructed the complainant HLRM as he by then was a non-practicing attorney, and if he did, the implication is that he was actually practicing as an attorney for his own account, contrary to the Attorneys Act and Rules, and was, therefore, not subject to regulatory oversight which he should have been.

[36] In response to this serious allegation, the respondent merely alleges that at the time he was assisting a debtors legal aid company pro-deo, which was helping the indigent for free (sic) and he vehemently denies that he was practicing for his own account.[33]

[37] His answer to the above complaint is exceptionally vague. Even on the little information provided, it could be accepted that he was practicing while his name was recorded on the non-practicing roll. Assisting a debtors' legal aid company pro deo certainly would constitute "practicing law" even if one is to accept that he was rendering such services pro deo.

[38] In the affidavit filed setting out the complaint by HLRM it is recorded that: [34]

38.1. On or about the 22nd day of August 2016, HLRM was contacted by the secretary of the respondent, who referred to herself as Lerato from Segaoale Attorneys;[35]

38.2. That Lerato from Segaoale Attorneys provided a new instruction to HLRM, which entailed urgent service of an application, and an undertaking was given to HLRM that a deposit would be paid to HLRM in respect of the costs associated with urgent service;[36]

38.3. That the sheriff's return was posted to the offices of the attorney;[37]

38.4. That HLRM's statement of account was sent to Segaoale Attorneys;[38]

38.5. That in their engagements with Daphne of Segaoale Attorneys, HLRM was informed that payment would be made shortly thereafter i.e., during January 2017.[39]

38.6. That numerous letters were addressed to Segaoale Attorneys requesting payment.[40]

[39] The complainant throughout his complaint describes the functioning of an ordinary attorney's office, supported with the necessary administrative staff assisting the respondent. The respondent in this regard merely denies that he was not responding to correspondence from these attorneys.

[40] An attempt was made by him, in his Supplementary Answering affidavit where he vaguely asserts that, unknown to him, his firm's

letterhead was utilized by Debtors Aid Legal Consultant CC to instruct HLRM.[41] This was the first time that this assertion was made by him is unsupported by any evidence. Also he failed to explain why a letterhead bearing the name of his firm would exist and be in circulation three years in advance of his firm being opened. The explanation provided by the respondent appears to be fabricated.

[41] In the most recent supplementary affidavit, the applicant asserts that that the respondent was not being forthcoming with the Court. There were other cases in which the respondent is reflected as the attorney of record during the same period. These matters have been brought to the Court's attention not by any honest disclosure by the respondent, but by the fact that these matters so happened to also involve the Council's attorneys of record.[42]

[42] The following cases can be listed in support of the above assertion:

42.1 *Butler v Old Mutual Limited & Financial Services Board* 32392/2017. Motion proceedings instituted on 29 August 2017, represented by the respondents' firm and his firm received and exchanged several correspondences.[43] During the course of these proceedings, RW Attorneys addressed several letters to Segaole Attorneys that went unaddressed.

42.2 In the matter of *Shibambo & Others v Malefo & Others* 46536/2017, similarly Motion proceedings were instituted out of the Pretoria Division of the High Court in a matter between *Annastetia Shibambo & Others*, as the applicants, against *Sarah Matshidiso Malefo & Others*, as the respondents. Herein the proceedings were initiated on 6 July 2017 under case number 46536/2017 and the applicants represented by the respondent's firm, namely Segaole Attorneys.

42.3 In respect of both these proceedings the respondent's address was listed as 62 Marshall and Sauer Street, Khotso House Building, 5th Floor, Suite 518, Marshall Town.[44] This address so recorded in the notice of motion is the same address utilized for the respondent throughout the complaint by Attorney

Human.

[43] On the strength of the above exposition counsel for the applicant therefore had argued that the inescapable conclusion to be drawn is that the respondent was practicing as an attorney whilst being recorded on the non-practicing roll and that his various denials that he was practicing while registered as a non-practicing attorney were not honestly made. As such it was argued that he was dishonest under oath.

[44] In response to the above, the respondent in his supplementary answering affidavit responds to these allegations in broad sweeping

terms. Albeit that he confirms that his firm acted on behalf of Butler, he alleges it was in a limited capacity.[45] In so far as the Shibambo matter is concerned, the respondent baldly denies the allegations, contending that he has no recollection of the matter and has not seen it before.[46]

[45] The exposition of the above facts confirm that the respondent practiced for his own account without the Council's knowledge, without any regulatory supervision by the Council and without compliance with the provisions of the former Attorneys Act, the Law Society Rules and subsequently the Rules for the Attorneys' Profession. They further confirm that the respondent's previous denials of his conduct were dishonestly made and that the explanations proffered by the respondent were fabricated to avoid the conclusion that he had, in fact, been practicing.

COMPLAINT: FAILURE TO REPLY TO CORRESPONDENCE AND TO COMPLY WITH DIRECTIONS OF THE COUNCIL

- [46] In this regard the applicant contends that the Council addressed several letters to the respondent regarding the complaint by HLRM,[47] repeatedly requesting his comments to the allegations made against him. The respondent failed to reply to the Council.
- [47] In answer thereto, the respondent merely notes that he failed to reply to the correspondence addressed to him by the Council and to comply with the Council's requests. He vaguely alleges that he was in touch with the Council's offices at the time and as a result the matter was resolved and the file was closed.[48] It is noteworthy that the respondent's assertions are not supported with evidence.
- [48] The letters received from the Council set deadlines for his responses. It further recorded his failure to respond to the previous

letters in this regard, and finally noted that he would inter alia be charged for his failure to respond to the Council's letters. Needless to say, he did not reply to the Council's letters.

- [49] The respondent does not provide a proper and cogent explanation for his abovementioned failures. He does not appreciate and/or

acknowledge the unacceptability of his failures, nor does he show any remorse. He also fails to take responsibility for his persistent

disregard to reply to the Council's letters.

COMPLAINT: AUDITOR'S REPORTS

- [50] The respondent was required to submit an auditor's report to the Council within six months of commencing practice for his own account, covering the first four months of such practice and it was due for submission to the Council on or before 28 February 2020.[49]
- [51] At the time of the present application being launched, more than a year after this report was due to be submitted, the respondent had still not filed an opening auditor's report with the Council. There can be no denial by the respondent of his failure to comply with his obligations. Initially he admits that he failed to submit an opening auditor's report to the Council and that he, therefore, failed to report to the Council on his trust bookkeeping for the financial period ending 28 February 2020.[50] Later baldly denies that an opening auditor's report was due for submission to the Council on or before 28 February 2020 and that he, therefore, failed to report to the Council on his trust bookkeeping for the financial period ending 28 February 2020.[51]
- [52] As such he boldly denies without any basis, his contravention of Rule 54.21 of the LPA Rules and that such contravention is misconduct in terms of Rule 57.1 of the LPA Rules.[52]

- [53] The respondent further alleges that he did not submit the report as there were no records to be audited as the practice had just opened, and that he instead submitted opening bank statements, and that the opening auditor's report could not be submitted due to COVID-19 disruptions.[53]
- [54] The provision of confirmation of the opening of the trust bank account is not in compliance with the provision of an opening auditor's report. The two instances cannot be equated with one another, for obvious

reasons.

- [55] Rule 54.26 of the LPA Rules provide for those instances where the Council is satisfied that it is not practicable to obtain the services of an auditor or inspector for the issuing of an auditor's report. In such instances the Council may accept such other evidence as it deems sufficient. In lieu of an auditor's report, the Council, generally, requires the completion of an exemption application which entails inter alia the submission of the relevant form accompanied with the relevant trust bank account statements and payment of the prescribed fee.[54]
- [56] The respondent within days of the application being served on him, and to be precise on 15 February 2021, he completed the requisite exemption application for the period 15 August 2019 to 29 February 2020. He submitted the exemption application to the Council on 17 February 2021 and it was approved on 17 March 2021.
- [57] From the above, it is apparent that the respondent was clearly aware of the requisite exemption application. He simply did not ensure his compliance with his obligations. He was aware that his opening auditor's report was due approximately a month prior to the country being placed into lockdown. The pandemic and the ensuing lockdowns could have no impact on the timeous submission of the exemption application. He simply fails to adequately explain his omission in this regard.
- [58] The respondent by failing to submit his opening auditor's report to the Council timeously had contravened the provisions of Rules 54.21 of the LPC Rules and made himself guilty of misconduct in terms of Rule 57.1 of the LPC Rules.
- [59] The respondent's denials that his conduct and failure constituted a contravention of the Rules and that it amounted to misconduct cannot be made in earnest, and his assertions that the practice had just opened were patently untrue. He simply failed to apply with Rule 54.21 and thus is guilty of misconduct.
- [60] The respondent as a seasoned practitioner was no doubt fully aware of his duty to have his trust accounting records audited and to submit an unqualified opening auditor's report to the Council and to do so timeously. He nevertheless failed to timeously comply with his said duty.

- [61] The submission of auditors' reports to the Council is important. These reports enable the Council to exercise its oversight function over practitioners and satisfy itself that the practitioner concerned is conducting a trust banking account correctly, that trust funds are being administered properly, and that trust accounting records are being kept in terms of the LPA and the LPC Rules. A practitioner is obliged to comply with this rule.
- [62] The respondent further fails to appreciate the importance of the timeous submission of auditor's reports to the Council and he fails to recognize the seriousness of his failure to have done so. He also does not show any remorse for his omission.
- [63] In addition he advances unsustainable denials for his misconduct, contradicted himself under oath and further advances patently unacceptable explanations for his conduct. His answers further reflect a negative blemish on his character and upon his honesty and integrity.
- [64] The respondent by virtue of the fact that he was practicing for his own account is also required to submit annual auditor's reports to the Council, reporting on the firm's trust affairs, within 6 months of each financial year end.[55] The respondent practiced for his own account during several financial periods without ever informing the Council of his practice, and without reporting to the Council. This is misconduct on its own.

COMPLAINT: PRACTICING WITHOUT FIDELITY FUND CERTIFICATES (FFCS)

- [65] A further complaint by the Council in in terms of Section 84(1) of the LPA which requires every attorney and trust account advocate who practices or is deemed to practice for his or her own account to be in possession of an FFC.
- [66] Section 41(1) of the repealed Attorneys Act contained a similar requirement. An FFC is issued annually. It is generally issued on the strength of an unqualified auditor's report.
- [67] As at the time of this application being launched the respondent had not been in possession of an FFC since opening his practice (on whatever date that may have been). He failed to apply for an FFC during the 2019 period and, as a result of his failure to submit an opening auditor's report, was not eligible to be issued with an FFC thereafter. This remained the case until 16 April 2021.
- [68] Despite this, he nonetheless, continued to practice for his own account without being in possession of an FFC.
- [69] In so far as the period following the formal opening of his practice is concerned, the respondent denies outright:
- 69.1. That he was practicing as an attorney without being in possession of a fidelity fund certificate at the time of the application being issued;[56]
- 69.2. That he practiced as an attorney without being in possession of a fidelity fund certificate during the period 1 January 2020 to 31 December 2020;[57] and

69.3. That he practiced as an attorney without being in possession of a fidelity fund certificate during the period 15 August 2019 to 31 December 2019.[58]

[70] In his Answering affidavit, the respondent contends that he applied for a FFC in November–December 2019,[59] albeit that he did not receive any deposits into his trust account by then.⁶³ Further that he was in contact with the Council offices to obtain a FFC,[60] but that the Council's offices were shut down in March 2020 due to COVID-19 and the Council, therefore, could not issue the

certificate.[61]

[71] From his responses so given, all that become blatantly clear is that during this period at no stage was the respondent in possession of the relevant FFCs. To the contrary, his answers confirm that during this period that he was not in possession of these certificates. The respondent's denial of his misconduct cannot therefore be sustained on his own version.

[72] His explanation that he did not receive any deposits into trust account also does not assist him. This has never been a requirement relative to an attorney's obligation to be in possession of an FFC.

[73] On behalf of the applicant it was further argued that the process of applying for a fidelity fund certificate is an online application made through the Legal Practitioners' Fidelity Fund, not the Council, and it is completed by the legal practitioner concerned. The FFC is issued to the practitioner as soon as the application process is successfully completed.

[74] To the matter at hand, the applicant submitted that the respondent did not complete the online application for his FFCs for the 2019 and 2020 periods, and as such he was not entitled to be issued with an FFC for the 2020 period in any event. He completed the online application for his FFC for the 2021 year on 16 April 2021, this after the present application was launched.

[75] The respondent's further failure to timeously submit an opening auditor's report resulted that he was not entitled to, nor would he be issued with an FFC for the 2020 and 2021 periods.

[76] His half-hearted attempt to lay the blame at the door of the Council and the COVID-19 pandemic, and his assertion that he applied for the relevant certificates, can be safely rejected and is in fact rejected by this Court.

[77] The respondent's failure to make a full disclosure to the Court and his election to blame the Council is yet another negative reflection of his honesty and integrity.

[78] On 16 April 2021, the respondent was issued with an FFC for the 2021 period, this after he complied with the Council's requirements and completed the online application.

- [79] Having first been issued in April 2021, it therefore must follow that he was not in possession of an FFC from the formal opening of his practice on 15 August 2019 until 16 April 2021, a period of approximately one year and eight months.
- [80] The respondent was also not in possession of an FFC during all periods that he practiced prior to his practice being formally opened with the Council. This is at a minimum a further period of 3 years that the respondent was not in possession of an FFC from the years 2016 to 2021.
- [81] The respondent having practiced without an FFC is extremely serious. It is an offence, punishable by a fine or imprisonment,[62] and the respondent was not entitled to any fee, reward, or reimbursement while he did not have an FFC.⁶⁷ To the Court it appears that the respondent, does not display any insight into the seriousness of his conduct, nor express any remorse.
- [82] The respondent's lack of insight and remorse is further illustrated by his subsequent failure to obtain an FFC for the 2022 year. He, therefore, again practiced for his own account from 1 January 2022 until his suspension on 9 June 2022. At the time of his suspension, the respondent had only been in possession of an FFC for approximately eight months of the preceding six years that he had been practicing.

FURTHER COMPLAINT: CONTEMPT OF COURT

- [83] On 9 June 2022 the respondent was suspended from practicing as an attorney pending finalization of the application. Pursuant thereto, the Court appointed a curator bonis for the respondent's practice and ordered the respondent to deliver his accounting records, records, and files to the curator bonis.[63]
- [84] In his supplementary answering affidavit, signed a month later, on 7 July 2022, he recorded that he is admitted as an attorney practicing as such under the name and style of Segaoale Attorneys.[64] The respondent, therefore confirmed his continued practice contrary to the suspension order.
- [85] The respondent further addressed correspondence to RW Attorneys in the Butler matter on 13 March 2023.[65] The respondent's letter inter alia records the name of the respondent's firm; his contact particulars and the address of the firm. The letter further records that the respondent no longer acts on behalf of Mr. Butler and that he will be withdrawing as attorney of record in due course. The letter was signed by Segaoale Attorneys.
- [86] The letter so written was on the respondent's letterhead and in his capacity as an attorney some nine months after he was suspended from practicing as an attorney. This provides confirmation that the respondent continued to practice as an attorney contrary to the suspension order being issued against him. The respondent simply offers bare denials in this regard[66] and he vehemently denies that he was in contempt of court.

- [87] Given the exposition of what has been set out above, this Court is satisfied that the offending conduct on the part of the respondent has been established on a preponderance of probabilities and as such the first leg of the inquiry has been met.
- [88] In answering the second leg of the inquiry, i.e. whether the practitioner concerned is a fit and proper person to continue to practice. The respondent has repeatedly failed to comply with important legislative safeguards intended to protect his clients and the public and has committed repeated offences. He did so for several years, briefly complied after the commencement of these proceedings, and thereafter returned to default. The respondent's misconduct therefore remains serious.
- [89] The complaint by HLRM raises serious issues that the respondent has not properly addressed. He has not only displayed a disregard for his fellow colleague but also the legislation, rules and regulations that govern his practice as an attorney.
- [90] In addition, the defenses advanced by the respondent do not withstand scrutiny. He has not made any concessions when he ought to have done so. He has advanced numerous unsubstantiated denials and explanations that cannot be made in earnest. He seeks to avoid sanction for his conduct to such extent that he refers to his career record as "unblemished". [67] Yet the Council's records reflect the receipt of 20 complaints against the respondent and that disciplinary committees have imposed fines in the amount of R17,000.00 against him.
- [91] The respondent has not approached the proceedings as one would expect of an officer of the Court. Instead of full and frank disclosures, he has made numerous denials that cannot be sustained in earnest, and he has not made an effort to place the full and correct facts before Court. Instead, he has sought to avoid any conclusions of misconduct by fabricating his version of events. His conduct in the proceedings illustrates a dire lack of insight concerning the conduct expected of him as a legal practitioner and an officer of the Court. He has had numerous opportunities to address the [68] inconsistencies that are readily apparent from his papers, and to take the Court into his confidence. He has not done so. He is fortified to continue to advance submissions and allegations that cannot be made in earnest.
- [92] It is expected of legal practitioners to maintain the highest standards of honesty and integrity. [69] As a matter of principle, a legal practitioner who is dishonest under oath in defending himself in disciplinary proceedings cannot complain if his perjury is held against him when the question arises whether he is a fit and proper person to continue practicing. [70]
- [93] In *General Council of the Bar of South Africa v Geach & Others* [71] 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."

[94] In casu the respondent's conduct does not meet the mantle of honesty and integrity expected of legal practitioners. He demonstrates that he does not appreciate the seriousness and unacceptability of his conduct, that he will advance untruths to avoid being held accountable, and that he will not be regulated by the Council nor the Court.

[95] His conduct does not meet the standard of behavior, conduct and reputation which is required of attorneys and officers of this Court. As such he can no longer be considered a fit and proper person to be allowed to practice as a member of a learned, respected and honourable profession.

[96] If this Court is of the view that the practitioner is not a fit and proper person to practice as an attorney, the third enquiry as mentioned, 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.

[97] The following principles have been laid down by our Courts in the determination of sanction:

97.1. The question before Court is whether the respondent should be permitted to continue practicing as a legal practitioner in the prevailing circumstances[72].

97.2. The objectives of the Court's supervisory powers over the conduct of legal practitioners have been described as being two-fold: first, disciplining and punishing errand attorneys, and secondly, to protect the public.[73] In deciding which course to follow, the court is not first and foremost imposing a penalty, the main consideration is the protection of the public.[74]

97.3. The Court may make such order it deems appropriate in the circumstances. The exercise of this discretion is not bound by rules,

and precedents consequently have a limited value. All they do is to indicate how other courts have exercised their discretion in the circumstances of a particular case. If a court were bound to follow a precedent in the exercise of its discretion it would mean that the Court has no real discretion.[75]

97.4. If the Court, having regard to all the circumstances brought before it, is no longer justified in regarding an attorney as a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to an attorney, it should remove him from the roll of attorneys. For the sake of the public, and no less the profession, it is of the utmost importance to enforce on all attorneys the high standard of duty which rests upon them and demands the great integrity which is expected of them. [76]

97.5. The implications of an unconditional order removing a legal practitioner from the roll for misconduct are serious and far-reaching. Prima facie, the Court which makes such an order visualizes that the offender will never again be permitted to practice his profession because ordinarily such an order is not made unless the Court is of the opinion that the misconduct in question is of so serious a nature that it manifests character defects and lack of integrity rendering the person unfit to be on the roll. If such a person should in later years apply for re-admission, he will be required to satisfy the Court that he is 'a completely reformed character' and that his 'reformation or rehabilitation is, in all the known circumstances, of a permanent nature'.^[77]

[98] Herein, the respondent's conduct is serious. He has shown no remorse. Neither is there any indication that he is to be deterred from repeating his misconduct in future. His repeated dishonesty confirms that he lacks the honesty and integrity expected of legal practitioners. His conduct throughout the course of the proceedings has been dishonest.

[99] The respondents' contempt of court, since the order of suspension was granted disqualifies him from this Court granting as a sanction the imposition of another suspension. He has shown that he will not abide by an order of the Court.

[100] Furthermore, our Courts have taken a firm stance against dishonesty, requiring the circumstances to be exceptional before a court will order the suspension of the practitioner concerned instead of his name being struck from the roll.^[78] We agree that in the present application, there are no exceptional circumstances present and it is for this reason that an order for the striking of his name from the roll will be given.

COSTS

[101] The applicant being the successful party in the circumstances and it having approach the Court under a public duty, we find no reason to deviate from the practice to award the applicant its costs and for such costs to be awarded on an attorney and client scale.

[102] In addition the applicant also requested to be awarded the costs previously reserved on 14 March 2023. Hereto such costs will be awarded to the applicant.

ORDER

[103] In the result the following order is made:

[103.1] The Respondent, LERATO MOSES SEGAOLE is struck from the roll of legal practitioners.

[103.2] The Respondent is to immediately surrender and deliver to the Registrar of this Honourable Court his certificate of enrolment as an attorney of this Honourable Court.

[103.3] 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, is hereby authorised and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court.

[103.4] Paragraphs 3 to 11 of the order of 9 June 2022 remain in force.

[103.5] The respondent is to pay the costs of this application and those costs reserved on 14 March 2023 on an attorney-and-client scale.

COLLIS J

JUDGE OF THE HIGH COURT, GAUTENG

DIVISION, PRETORIA

I agree

BAM J

DIVISION, PRETORIA

APPEARANCES:

APPLICANT ATTORNEYS FOR APPLICANT Rooth & Wessels Inc COUNSEL FOR APPLICANT Mr. R. Stocker RESPONDENT ATTORNEYS FOR RESPONDENT In persona COUNSEL FOR RESPONDENT Adv J.S.C Nkosi DATE OF HEARING: 24 August 2023 DATE OF JUDGMENT: 28 November 2024

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

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

[2] Ibid.

[3] No. 28 of 2014.

[4] Section 44(1) LPA.

[5] 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.

[5] 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.

[6] See: Malan v The Law Society of the Northern Provinces (supra) at 219 – 220, par. 4 to 8.

[7] See: Law Society, Cape of Good Hope v Segall 1975 (1) SA 95C at 99B; Beyers v Pretoria Balie Raad 1966

(2) SA 593 (A) at 606B; Prokureursorde van Transvaal v Kleynhans (supra); Malan v The Law Society of the Northern Provinces (supra).

- [8] See: Kaplan v Incorporated Law Society, Transvaal 1981 (2) SA 762 (T) at 781H; Die Prokureursorde van die Oranje Vrystaat v Schoeman 1977 (4) 588 (O) at 603A–B.
- [9] 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).
- [10] 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.
- [11] 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.
- [12] See inter alia: Prokureursorde van Transvaal v Kleynhans (supra) at 846G–H and at 853E–H.
- [13] Kekana v Society of Advocates of South Africa [1998] ZASCA 54; 1998 (4) SA 649 (SCA) 656 D.
- [14] Law Society of the Northern Provinces v Sonntag 2012 (1) SA 372 (SCA) 380 C - I.
- [15] Prokureursorde van Transvaal v Kleynhans (supra) at 853G–H.
- [16] Hepple v Law Society of the Northern Provinces 2014 JDR 1078 at par 9.
- [17] Law Society of the Northern Provinces v Mogami & Others 2010 (1) SA 186 (SCA) at par 26.
- [18] Rule 16.1, Code of Conduct.
- [19] Rule 16.2, Code of Conduct.
- [20] Rule 16.3, Code of Conduct.
- [21] Rule 16.4, Code of Conduct.
- [22] 013: p 1 – 12.
- [23] 017: p 1 – 2.
- [24] 002: p 9, par 2.1 - 2.2.
- [25] 007: p 6 – 7, par 18 – 22.
- [26] 007: p 7, par 20 – 21.
- [27] 007: p 7.
- [28] 007: p 7.
- [29] 30 008: p 41.
- [30] 007: p 13.

- [31] Rule 21.1 and 21.2 of the Code of Conduct.
- [32] 002: p 30 para 8.
- [33] 007: p 6, par 18.
- [34] 002: p 41, para 4.
- [35] 002: p 41, par 4.
- [36] 002: p 42, par 4.
- [37] 002; p 42, par 5.
- [38] 002: p 42, par 6.
- [39] 002: p 42, par 6.
- [40] 002: p 42 – 43, par 7, 9, and 11.
- [41] 015: p 5, par 12.
- [42] 019: p 24 – 26. 41 019: p 27 – 29.
- [42] 019: p 24 – 26.
- 41 019: p 27 – 29.
- [43] 019: p 27 – 29.
- [44] 47 019: p 53 – 56.
- [45] 48 020: p 2, at Ad paragraph3.
- [46] 020: p 2, at Ad paragraph 4.
- [47] 002: p 68 – 76.
- [48] 007: p 7, par 23.
- [49] Rule 54.21 LPA Rules (Rule 35.20 Rules for the Attorneys Profession).
- [50] 007: p 4, par 4.
- [51] 54 007: p 5, par 12.
- [52] 007: p 6, par13.
- [53] 007: p 4, par 4 and p 5, par 11.
- [54] Rule 54.26, LPA Rules.
- [55] Rules 54.20, 54.22, 54.23, 54.24, and 54.28.
- [56] 007: p 3.

[57] 007: p 3, par 2.

[58] 007: p 4, par 3.

[59] 007: p 3

[60] 64 Ibid.

[61] Ibid.

[62] Section 93(8)(a), LPA, Section 83(10), Attorneys Act.

[63] 013: p 1 – 12.

[64] 015: p 1, par 1.

[65] 019: p 52.

[66] 020: p 2, at Ad Paragraph 1 and Ad Paragraph 2.

[67] 72 015: p 1, par 1.

[68] 016: p 43 - 44, par 8.2.1 – 8.2.3.

[69] Rule 3.1 - Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities – GENN 168 OF 2019.

[70] *Kekana v Society of Advocates of South Africa*

[1998] ZASCA 54; 1998 (4) SA 649 (SCA) 655

[71] 2013

(2) SA 52 (SCA) at para. 87.

[72] *Law Society Cape v Peter* 2009 (2) SA 27 (SCA) par 28.

[73] *Summerley v Law Society, Northern Provinces* 2006 (5) SA 613 (SCA) at par 19.

[74] *Malan and another v The Law Society, Northern Provinces* (supra) par. 7.

[75] *Malan & another v Law Society, Northern Provinces* (supra) para 9.

[76] *Incorporated Law Society, Transvaal v Visse and Others; Incorporated Law Society Transvaal v Viljoen* 1958(4) SA 115(T) at 131 D - G.

[77] *Malan & another v Law Society, Northern Provinces* (supra) para 8.

[78] *Malan & another v Law Society, Northern Provinces* (supra) para 10.

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