

SOUTH AFRICA / JUDGMENT

# South African Legal Practice Council v Thobane (87/2020) [2021] ZAMPMHC 41 (14 May 2021) [2021] ZAMPMHC 41

## COURT

Middelburg High Court, Mpumalanga

## BEFORE

Greyling-Coetzer, Opperman

## CASE / FILE NUMBER

87/2020

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IN THE HIGH COURT OF  
SOUTH AFRICA  
MPUMALANGA DIVISION,  
MIDDELBURG (LOCAL SEAT)

## CASE

NUMBER: 87/2020

(1) REPORTABLE: YES

/ NO

(2) OF INTEREST TO OTHER

JUDGES: YES/NO

(3) REVISED.

DATE: 14/05/2021

## SIGNATURE

In

the matter between:

SOUTH AFRICAN LEGAL  
PRACTICE COUNCIL  
Applicant  
and  
STEPHENS ANTHONY  
THOBANE  
Respondent

**JUDGMENT**

GREYLING-COETZER AJ

**INTRODUCTION**

[1] Uberrima fides – the highest possible degree of good faith – this is what is expected of legal practitioners in their dealings with their clients,

the public and the Court. The image and standing of the legal profession are judged by the conduct and reputation of all its members. To curb the erosion of values in the legal profession, the Court and the South African Legal Practice Council (“the Council” or “the LPC”) have a duty to act where legal practitioners’ conduct fall short of what is expected. 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.

[2] The applicant, the South African Legal Practice Council, acting as custos morum of the legal profession, applies in terms of Section 44(1) of the Legal Practice Act[1] (“LPA”) for the suspension from practice of the respondent Mr Stephan Anthony Thobane, a senior practising attorney of the High Court of South Africa, together with further incidental and ancillary relief.

[3] The application was launched in January 2020 and served on the respondent on 20 February 2020. The respondent entered notice of his opposition to the application on 28 February 2020 and filed his answering affidavit 8 months later, on 2 November 2020. The respondent has not formally sought condonation for the late filing of his affidavit. The respondent averred in summation that after entering the notice of opposition he only briefly consulted his attorney on 15 March 2020, whereafter the President declared the national state of disaster resulting in the national lockdown from 26 March 2020. The lockdown and ill health hampered him for 5 months in consulting with his attorney until 1 September 2020. Thereafter draft versions of the answering affidavit were exchanged and reviewed causing further delays. The respondent stated that the delay was not due to a deliberate disregard for the Uniform Rules and resulted in no prejudice to the applicant.

[4] The Council indicated that it abides by the decision of the Court in respect of the issue of condonation. Notwithstanding the respondent’s rather paltry excuse, which lacks specificity, there appears to be no prejudice to the Council and it would serve the interests of justice to condone the belated filing of the answering affidavit as it will enable this Court to consider the respondent’s contentions and better evaluate the application. The application is of a serious nature with potentially grave consequences for the respondent.

[5] The respondent in his answering affidavit raises two points in limine. Firstly, that the founding affidavit seeks that the respondent's name should be removed from the roll of attorneys, but the resolution taken by the Council was limited to seeking the respondent's suspension. As such the 'founding affidavit'

is ultra vires the resolution. The second point in limine is that the circumstances giving rise to the application have changed since the Council's resolution and has therefore been overtaken by events.

[6] These points in limine were abandoned by the respondent at the commencement of the hearing, who advised that these aspects stand to be regarded as forming part of the respondent's opposition on the merits. As such same is dealt with under the relevant headings later herein.

[7] In exercising the court's disciplinary function and establishing all the relevant facts, the respondent was invited to adduce further evidence, on issues of concern, through a supplementary affidavit. The respondent took up this opportunity. The issues were framed as follows ("the additional issues letter"):

7.1 The respondent was found guilty by a disciplinary committee of the Law Society in 2009 for filing his 2009 auditor's report late. In 2011 he filed his auditor's report timeously. This was the year when the respondent was the vice-chairperson of the

Attorney's Fidelity Fund as well as the President of the Law Society of the Northern Provinces. What did the respondent change in his practice which enabled timeous compliance in the 2011 and why could he not sustain this change in subsequent years?

7.2 The reason for not actively engaging with the disciplinary committee of the Law Society on learning of the disciplinary action against him mid 2018 either initially or after the first postponement of the hearing against him;

7.3 The reason for failing to remedy his transgressions upon learning of having been found guilty of same on 16 November 2018 (the second conviction);

7.4 How the respondent was able to file the auditor's reports for the periods ending 2017, 2018 and 2019 within 1 month of service of the current application and what prevented him from implementing the same measures before the due dates being 31 August 2017, 31 August 2018 and 31 August 2019;

7.5 Why, if the practice was closed in September 2019, it took the respondent until March 2020 to file his closing audit reports;

7.6 An explanation why the respondent continued to practice for his own account for several successive years without a fidelity fund certificate at risk to his clients and contrary to peremptory provisions of the legislation governing his profession. How many professional employees he had and how many clients he had put at risk. Whether he oversaw the work done by the persons in his employ and how, without auditor's reports, he was able to know that they were not stealing from the clients;

7.7 An explanation for the contradiction between the allegation that payment to Mr Seete was made personally on 23 April 2014 and the allegation that a cheque was drawn in favour of Mr Seete after a detailed consultation on 12 November 2015;

7.8 An explanation why the respondent charged Mr Seete a contingency fee when there was no such agreement in place.

7.9 Why, having regard to the circumstances of the case, the respondent should be suspended from practice rather than struck from the roll of attorneys.

7.10 At the commencement of the hearing on 9 December 2020, the respondent's representative placed on record that the respondent had 'abandoned' the points in limine but submitted that they be considered as part of the overall argument. That being so, the respondent is to state clearly which portions of his second in limine objection still fall for consideration and why;

7.11 Should the respondent choose not to deal with one or more of these queries, full reasons for such refusal are to be provided. Should certain issues only be addressed, an explanation for the failure to deal with the balance should be provided.

[8] The respondent was afforded until 8 February 2021 and the applicant until 22 February 2021 to respond. The aforesaid were extended as the respondent's attorneys of record had withdrawn on 1 February 2021. In the end all responses were submitted to the court on 4 March 2021.

SALIENT

## FACTS

[9] The parties accepted that the facts of the matter were largely common cause alternatively not genuinely and seriously disputed.

[10] The respondent was admitted as an attorney on 2 July 1996. The respondent practised for his own account under the name and style of Thobane (SA) Attorneys ("the practice" or "the firm") from 1997 until the closure of his practice on 13 March 2020. The respondent is a senior practitioner active within the greater legal fraternity and profession. He was deployed for NADEL on various of the Council's predecessors, the Law Society of South Africa's ("the Law Society") committees, bodies and structures. He was the Vice-Chairperson of the Attorneys Fidelity Fund as well as the President of the Law Society of the Northern Provinces in 2010/2011. Since 2013 to date the respondent has acted as a Judge in various

Divisions of the High Court of South Africa.

[11] Over his 22 years in practice the respondent for 13 years failed to submit alternatively failed to timeously submit auditor's reports. Consequently, the respondent practised without being in possession of a Fidelity Fund Certificate for 1 month in 1998, 2 weeks in 2000, 7 weeks in 2001, 2 and a half months in 2002, 25 days in 2010, 4 months and 9 days in 2012, 23 days in 2013, 5 weeks in 2014, 3 months in 2015, the years of 2016, 2017 and 2019 and 8 months in 2019. Thus for a period of 4 years and 11 months.

[12] In 2009, the respondent was convicted of the late filing an auditor's report for the year 2009 and was fined R 5000 of which R 2500 was suspended for 3 years. Whilst the respondent was in office as Vice- Chairperson of the Fidelity Fund as well as President of the Law Society of the Northern Provinces, the respondent managed to file his Auditor's report although it was 25 days late in respect of 2010 and timeously in 2011. The defaulting conduct commenced again in 2013 and persisted throughout until 2017 and again in 2019.

[13] In October 2015 a complaint was received by the Law Society from Mr KP Seete ("Mr Seete") a former client of the respondent. He had attended to a third party claim for him. Payment of the claim was received by the respondent on 4 March 2014, in an amount of R 7,545.45, towards costs and on 22 April 2014, an amount of R 25 000 in respect of the capital award. At the time of the complaint, the respondent had not accounted to Mr Seete nor had he paid him anything from the award. The complaint was referred to the respondent and on 12 November 2015, the respondent caused R 17,343.75 to be paid to Mr Seete. Pursuant thereto, Mr Seete withdrew the complaint.

[14] The Law Society attempted an inspection of the respondent's practice during late 2016 into early 2017. The inspection was motivated by the respondent's failure to submit an auditor's report for the period ending 28 February 2016 and the complaint by Mr Seete.

[15] The inspection was preceded by the Law Society addressing correspondence to the respondent regarding the inspection. The inspector, Ms. Kaserera ("Ms Kaserera") had contacted the practice repeatedly and was informed that the respondent was an acting Judge and would revert to her. Ms Kaserera attended at the practice's office but was still not able to conduct the inspection as the respondent was not available nor was the professional assistant left in charge. The attempts to conduct the inspection were over a three-month period, commencing on 19 September 2016. Ms Kaserera in addition contacted the respondent's auditor during the months of February 2017 to April 2017 who advised that he was waiting for some files from the respondent's practice to attend to the audit procedures.

[16] On 24 January 2017, the respondent informed Ms Kaserera that he would return from his acting judicial duties at the end of February 2017 and would then make the necessary arrangements to meet with her. The respondent did not make contact with Ms Kaserera.

[17] On 31 July 2017 the respondent's membership fees to the Council

for the year 2018 fell due. The respondent failed to pay same. Similarly, the respondent failed to pay his membership fees for the year 2019 which were due on 31 July 2018.

[18] During mid 2018 the respondent was called before a disciplinary committee of the Law Society for his failure to comply with his obligations in respect of his auditor's reports, fidelity fund certificates and membership fees. In correspondence by the respondent dated 25 June 2018 the respondent intimated that "I will not contest the charges against me and will in fact plead guilty thereto." At the respondent's request and for purposes of obtaining legal representation, the enquiry was postponed on 4 July

2018. The enquiry was at some point again postponed.

[19] On 23 October 2018 the respondent indicated to the Law Society that he was unable to attend the enquiry set for 24 October 2018 as he was acting as a Judge, therefore seeking a further indulgence. The

enquiry was proceeded with and the respondent was found guilty, in his absence, of 7 of the 12 charges and the matter was referred to the Council. On 16 November 2018 the respondent was informed of the outcome of the hearing.

[20] In May 2019 a complaint was received from Mr Vuma whom the respondent

had represented in an action against the Minister of Police. The capital award received being the amount of R60 000, was paid to the respondent on 17 April 2019, but not paid to Mr Vuma, nor was Mr Vuma informed of the receipt of these funds. The respondent also failed to return Mr Vuma's telephone calls. On 18 September 2019, the amount of R43 000 was paid to Mr Vuma.

[21] On 1 July 2019 the Council resolved to launch the present application.

[22] Notwithstanding the outcome of the disciplinary hearing of 24 October

2018, the respondent in August 2019, again failed to file his auditor's report for the year 2019 and as such, practiced without a Fidelity Fund Certificate which conduct constituted a criminal offence.

[23] The respondent alleges to have closed his practice on 11 September 2019 however this did not dispense with the need for the filing of the report but he once again failed to do so.

[24] Only after service of the present application, and on 13 March 2020 did the respondent submit auditor's reports for the years 2017, 2018, 2019 and his closing auditor's report. The overdue

membership fees was paid shortly before the filing of the answering affidavit on 29 October 2020.

## LEGAL PRINCIPLES

[25] The test to determine whether a person is fit and proper involves a three stage enquiry and which is well established, needing little elaboration.[2] The first stage is to determine whether the offending conduct has been proven on a balance of probabilities. This is a factual enquiry. The second stage is to determine whether the person is fit and proper to continue to practise, taking into account the proven misconduct. This enquiry entails a value judgment which involves the weighing up of the conduct complained of against the conduct expected of an attorney. The third and final stage is to determine whether the person concerned should be struck off the roll or whether a suspension from practice would suffice. The latter two enquiries are matters for the discretion of the court, involving value judgments.

## ANALYSIS

The first stage: The offending conduct

Practicing without a Fidelity Fund Certificate

[26] In terms of Section 84(1) of the LPA, every attorney other than a legal practitioner in the full time employment of the South African Human Rights Commission or the State as a State Attorney, and who practices or is deemed to practice for his or her own account, either alone or in partnership or as a director of a practice which is a juristic entity, must be in possession of a fidelity fund certificate.

[27] This is peremptory by nature and a contravention thereof is, in terms of Section 93(a) of the LPA, an offence punishable with a severe fine or imprisonment for a period not exceeding 2 (two) years, or both such fine and imprisonment. The offence is thus criminal in nature.

[28] The purpose of the issuing of a fidelity fund certificate is to

protect the general public, as the Legal Practitioners' Fidelity Fund was founded for the purpose of reimbursing persons who suffer pecuniary loss as a result of theft committed by a practicing attorney.

[29] No legal practitioner or person employed or supervised by such legal practitioner may receive or hold funds or property belonging to any person, unless the legal practitioner concerned is in possession of a fidelity fund certificate.[3]

[30] Section 85(1) of the LPA provides that a legal practitioner who is obliged in terms of Section 84(1) to be in possession of a fidelity fund certificate, must apply to the LPC for such a certificate, as determined in the Rules. A fidelity fund certificate is issued on the strength of an unqualified auditor's report, which must be submitted annually to the LPC, and which report relates to the financial year ending immediately prior to the application for a fidelity fund certificate. This is regulated by Rule 54.29 of the LPC Rules, which provides that in order to qualify for the issuing of a fidelity fund certificate, a practitioner must ensure that an unqualified audit or inspector's report is issued in respect of any firm/practice or firms of which he or she is or was a partner or director or sole practitioner during the financial

period under review, and which is delivered timeously to the LPC.

[31] The corresponding provision on the repealed Attorneys Act was Section

41(1). This Section provided that a practitioner shall not practice or act as a practitioner for his or her own account or in partnership, unless he or she is in possession of a fidelity fund certificate. Similarly this stipulation was peremptory and a contravention thereof was, in terms of Section 83(10) of the Attorneys Act, an offence punishable with a severe fine.

[32] The respondent practiced without a fidelity fund certificate for

various portions of 13 (thirteen) years, totalling 4 (four) years and 11 (eleven) months. The respondent's defence in this respect is essentially that since inception, his practice experienced problems with bookkeeping services, in that the auditors became tardy, resulting therein that often audit reports were filed late. The bookkeepers would prepare the books of account in a particular manner not preferred by the auditors, causing a delay in the audit process. This had a knock-on effect from year to year.

[33] The respondent initially failed to explain why he nevertheless continued to practice for his own account for several consecutive years without a fidelity fund certificate, at the risk to his clients, and contrary to the peremptory provisions of the legislation governing his profession. The respondent elected to describe the state of affairs as 'very regrettable'. Essentially the respondent's only contention in this regard is to state that his transgressions are historical in nature and that they do not have a bearing on the current application.

[34] The respondent, having not only been a senior attorney but the president of the Law Society of the Northern Provinces, as well as the vice-chairperson of the Attorneys' Fidelity Fund, knew

exactly what was expected of him in respect of a fidelity fund certificate. Prompted during argument as to why no detail was provided it was conceded by Mr Manamela, that in hindsight more detail would have been useful to the court and ought to have been provided.

[35] The respondent's amplified explanation being that he was personally responsible for the movement of money out of the trust account as he was the sole signatory, keeping a strict eye on the account therefore making sure there was no possibility of theft, and personally overseeing his three employees (a professional assistant, typist and receptionist), who were honest people, is similarly unsatisfactory. The respondent on his own version was frequently absent from his practice as from 2013 due to accepting acting appointments to the Bench, leaving his practice in the hands of his staff who were not sufficiently qualified.

[36] In circumstances where non-compliance has a knock-on effect, as

alleged by the respondent, it is at the very least expected that a practitioner would give adequate and timeous attention to the

internal- and auditing issues causing the knock-on effect, until same has been sorted out. Alternatively, if not feasible due to the small size of his practice, to have elected at the very least pursuant to the previous conviction in 2009, to cease practice until such time as these issues could be resolved.

[37] No other reasonable conclusion can be drawn other than that the respondent, well knowing and wilfully contravened the governing rules, more specifically Section 84(1) of the LPA (previously Section 41(1) of the repealed Attorneys Act) as read with Section 93(8) of the LPA (previously Section 83(10) of the repealed Attorneys' Act) and continued to practice without a fidelity fund certificate, placing trust creditors at risk. Failure to submit auditor's reports

[38] In terms of Rule 70 of the Law Society's former Rules, a firm/practice was obliged, at its expense, once in each calendar year or at such other time as the council might have required, to appoint an accountant, approved by the council, to act on behalf of and as a representative of the Fund, to discharge the duties assigned to him or her in terms of Rule 70.4. A firm was obliged to ensure that the report to be furnished by such accountant in terms of Rule 70.4 was to be furnished within or at the required time, provided that the council might have, in its discretion and on such conditions as it might have stipulated, upon written application by a firm relating to a particular report, have condoned the failure by that firm to comply with such requirement.

[39] Per Rule 70.4 the time period was set out as being within 6 (six) months of the annual closing of the accounting records of the firm concerned. In terms of Rule 89.11 the respondent and by contravening Rule 70, made himself guilty of unprofessional, dishonourable and unworthy conduct. Rule 89.11 was amended and Rules 35.19, 35.21, 35.22 and 35.23 of the Rules of the Attorneys' Profession provided similarly. According to these provisions, Rule 38.1 provided

that the respondent made himself guilty of unprofessional conduct by contravening Rules 35.19, 35.21, 35.22 and 35.23. These rules were repealed with the enactment of the LPA, and currently in terms of the LPC Rules, Rule 54 again incorporates these requirements.

[40] In terms of Rule 57.1 a contravention of Rule 54 constitutes misconduct.

[41] The annual auditor's report is intended to satisfy the Law

Society/Council that prima facie a practitioner has kept proper accounting records and that Trust funds entrusted to the practitioner are handled and administered properly. This is also a prerequisite for a practitioner being issued with a Fidelity Fund certificate.

[42] Over the respondent's period in practice of 22 (twenty two)

years, the respondent, for 13 (thirteen) years thereof, failed to submit, or at best for him, failed to timeously submit, auditor's

reports. For the same transgression the respondent was found guilty in 2009. This did not motivate him to rectify the situation and the non-compliance persisted. The most recent transgressions can be summarised as follows: The report due for 2015 was filed 10 (ten) months late; the report due for 2016 was filed 9 (nine) months late; the report due for 2017 was filed 30 (thirty) months late; the report due for 2018 was filed 18 (eighteen) months late and the report due for 2019 was filed 7 (seven) months late.

[43] The Law Society addressed two letters to the respondent during November/December 2016 regarding his failure to submit his audit reports for the period ending February 2016. In such letters his

suspension application was already postulated. This however did not inspire a response from the respondent, nor did it motivate the respondent to submit the reports. The auditor's reports for 2017, 2018 and 2019 were only submitted during March 2020 and only after service of the present application on the respondent.

[44] The respondent's explanation, formulated broadly, is that

issues were experienced with his bookkeeper and auditors which were compounded by the fact that he had acted as a judge since 2013 and was thus out of office for extended periods of time. The respondent's explanation is exceptionally vague, lacks particularity and accordingly unsatisfactory. Once again there can be no question about the respondent's knowledge of the obligations to be complied with. The respondent's explanation merely indicates that his failure was continuous in nature.

[45] The respondent, in confirmation of the allegation that he closed his firm in September 2019, filed a closing audit report only during March 2020 and after service of the present application. Again, not in compliance with the governing rules.

[46] Being provided with a further opportunity to place evidence before

court addressing the above lacunas and concerns, the respondent denied that the filing of the 2017, 2018 and 2019 reports were

triggered by this application. He explained that the reports were in the making since 2018 and that it was purely coincidental that the reports were filed shortly after this application was served on him. As to the filing of the closing auditor's report, he ascribed it to a few queries which needed to be attended to. He further stated in his amplified response that the auditors had taken a view that all the audit reports had to be filed at the same time. He does not explain why he did not insist that there should be earlier compliance.

[47] The further explanation does not assist the respondent as it lacks

specificity. It is improbable that the auditor reports of a practice which on the respondent's version is a small practice with little cash transactions take in some instances more than 3 years to finalise. So too he fails to explain why the closing audit, which was required only for a period of 6 months, would not require such a lengthy period of time to finalise if diligence was employed. The facts point thereto that the compilation of the reports were indeed motivated by this application, or at the very least hurried along by it.

[48] Invited to explain why the timeous filing of the auditors reports was possible in 2011, during which period the respondent was the vice-chairperson of the Fidelity Fund and President of the Law

Society of the Norther Provinces, the respondent explained in his supplementary affidavit that his position aforesaid caused him to spend more time on matters concerning the Law Society. As such, his practice "took a knock" and became less active. He states that there were fewer clients walking through the door as a result of his repeated absence due to both the Law Society and the Fidelity Fund commitments, thus resulting in lesser Trust account activity. In bookkeeping and auditing terms, there was less work to do and it was thus easy to comply timeously. Therefore nothing changed in his practice in order to enable compliance. Upon return to his practice full time, he explains his practice grew and so did the volume of the Trust account activity, which again caused a backlog and snowball effect of non-compliance.

[49] The respondent's explanation cannot be accepted when regard is had to the fact that he acted as president of the Law Society and as vice-chairperson of the Fidelity Fund during the period November 2010 to November 2011. The auditor's reports, which were submitted timeously, related to 2011, therefore the period 28 February 2010 to 28 February 2011. This means that only a period of 4 (four) months during the relevant financial year coincided with the respondent's aforementioned position(s). Should one accept the explanation proffered by the respondent, his practice would have become less active as from November 2010, which would have caused him to comply timeously with the submissions of the auditor's reports for 2012, which he failed to do.

[50] The respondent's explanation does not bear scrutiny when regard

is had to the fact that from 2013 onwards, he was engaged as an acting judge for various periods. This in turn also caused a decrease

in his practice, which would then have eased timeous compliance, which it seemingly did not.

#### Failure to pay LPC membership fees

[51] In terms of Rule 4 of the LPC Rules, all legal practitioners who are admitted and enrolled in terms of Section 24(1) of the LPA as a legal practitioner, shall pay an annual fee to the LPC at such time as may from time to time be fixed by the LPC. That fee, in the case of a legal practitioner who is in practice, is R2 500 per annum. In the present instance such fee was payable during July 2017 and July 2018.

[52] In terms of Rule 57.1 of the LPC Rules, a contravention of Rule 4 amounts to misconduct on the part of the partners or directors of the firm.[4]

[53] The respondent failed to make payment of his annual membership fees

for the years 2018 and 2019 on the respective due dates. The respondent attributes this default to a communication error between

his firm's personnel and himself. It has now been paid. The respondent categorises the delay in payment as an issue which no longer requires the attention of this court.

[54] The payments were made by the respondent on 29 October 2020 and

shortly before the filing of the respondent's answering affidavit, this being some 8 (eight) months after service of the

present application and more than 3( three) years in respect of 2018 and 2 (two) years in respect of 2019 after it being due. The

respondent's explanation is so vague that it does not enable this court to properly assess the bona fides thereof. Consequentially, the respondent's failure makes him guilty of misconduct as provided for in terms of the governing rules.

#### Complaint: Mr KP Seete

[55] Rule 35(11) of the Rules for the Attorneys' Profession[5] provides that each firm needs to ensure that it, within a reasonable time after the performance or early termination of any mandate,

accounts to its client in writing, showing the details of all amounts received by it in connection with the matter concerned, particulars

of all disbursements and other payments made by it in connection with the matter, fees and other charges raised against the client, and the amounts due to or by the client. Further, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed.

[56] Rule 35(12) of the Rules of the Attorneys' Profession[6] provides that a firm ought to ensure that unless otherwise instructed, it pays any amount due to a client within a reasonable

time.

[57] The respondent, acting for Mr Seete in a third party claim, received

the amount of R7 545.45 on 4 March 2014 in respect of costs and R25 000 on 22 April 2014 in respect of the capital sum claimed. At the time of the complaint, being October 2015, the respondent had not accounted to Mr Seete, nor had the respondent made any payment to Mr Seete in respect of the award.

[58] The respondent disputes that he delayed payment and that he failed to account to Mr Seete, alleging that payment in this matter was made on 23 April 2014 to Mr Seete personally, after the respondent struggled to locate Mr Seete. This very statement is however contradicted by the respondent, when he confirmed under oath that after receipt of the complaint in October 2015, he undertook measures to locate Mr Seete, and that a cheque was drawn in favour of Mr Seete after a detailed consultation and full accounting which occurred on 12 November 2015. The latter allegations of payment are supported with proof of the ostensible accounting and cheque drawn.

[59] The respondent's allegation of payment as far back as 23 April

2014 is thus irreconcilable with documentary proof he himself attached to his answering affidavit and the later allegation of payment on 12 November 2015. Payment to Mr Seete was thus only made 1 (one) year and 7 (seven) months after receipt of the capital award. When prompted by the court as to the reason for this contradiction during argument, same was ascribed as an error.

[60] Regrettably the respondent's explanation further reveals non-compliance with the governing rules. The account does not contain the detail of the amount of R7 545.45 received by the respondent on behalf of Mr Seete and receipt thereof appears not to have been disclosed to Mr Seete. The account further contains no detail of all disbursements made in connection with the matter, or how the amounts were computed.

[61] No affidavit was submitted to explain this contradiction nor was the court requested to afford the respondent an opportunity to do so. The contradiction was highlighted in paragraph 36 of the heads of argument dated 23 November 2020 filed on behalf of the LPC but despite ample notice, no effort was made to explain the error or how it came about that in the same affidavit the respondent could contend that Mr Seete was paid in full on 23 April 2014 and again on 12 November 2015. Notwithstanding the inaction by the respondent to effectively explain the contradiction he was afforded another opportunity in the additional issues letter and in his supplementary affidavit it was explained that the Road Accident Fund made payment to his practice on 23 April 2014, where after he struggled to locate Mr Seete. Once the latter was located, payment was made to him on 12 November 2015.

[62] Once again the respondent failed to address when and how he informed

or attempted to locate Mr Seete pursuant to receiving the funds during 2014. From the explanation provided by the respondent, the

respondent only sprung into action upon receipt of the complaint. The respondent delayed payment of Trust funds to his client for 1 (one) year and 7 (seven) months. Similarly, the failure to properly account, as is required of the respondent, is evident.

[63] The account further reveals that the respondent had applied a contingency fee formula when billing the respondent but the agreement between the respondent and Mr Seete was not contingency based but catered for an hourly fee. No explanation was proffered by the respondent in respect of this discrepancy. The contingency fee charged appears to have been charged not only in the absence of an agreement to that effect, but contrary to the Contingency Fee Act 66 of 1997 as amended (the Contingency Fee Act). Once again this difficulty was highlighted in paragraph 37.2 of the LPC's heads of argument, but the respondent elected not to address it.

[64] Taking the opportunity in a supplementary affidavit filed the respondent confirmed that a contingency fee agreement was entered into, but that a copy of the said agreement cannot be located. The respondent explained that Mr Seete has not challenged the contingency fee of 25% which points to him being aware and accepting it. It was contended on behalf of the Council that the respondent is clearly in possession of Mr Seete's client file, as he attached several of these documents to his original answering affidavit. Therefore if a contingency fee agreement existed, it would have been contained in the client file, alternatively a copy would be available in the court file.

[65] In terms of the Contingency Fee Act, should a contingency fee agreement be entered into, a legal practitioner shall be entitled to a fee equal to or subject to subsection (2), a fee higher than his or

her normal fee, set out in such agreement. Any fee referred to in subsection (1)(b) which is higher than the legal practitioner's

normal fees, shall not exceed such normal fee by more than 100%, provided that in the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner shall not exceed 25% of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount shall not, for purposes of calculating such excess, include any costs.

[66] The aforementioned calculation is not evident from the account nor

was this aspect addressed by the respondent in his supplementary affidavit, notwithstanding being called upon to do so in the Council's affidavit, as well as by the court. The amount of R7 545.45 in respect of the cost contribution similarly remains

unaccounted for. The respondent was also invited by the Council in its replying affidavit to disclose Mr Seete's ledger account,

together with the relevant bank statements and supporting source documents, detailing the handling of the amount of R7 545.45.

Notwithstanding this, the respondent failed to take up this opportunity in his supplementary affidavit.

[67] It is thus unavoidable to conclude that the respondent delayed payment to Mr Seete for more than a year and failed to properly account to Mr Seete.

Complaint: Mr GS Vuma

[68] The respondent represented Mr Vuma in an action against the Minister

of Police. A capital award of R60 000 was paid to the respondent on 17 April 2019. Mr Vuma complained that the respondent had failed to inform him of the payment of the funds and that the respondent had failed to respond to his telephone calls.

[69] The respondent contends that the claim is unmeritorious, but offered

very little evidence to support this contention. The respondent explained that the complaint by Mr Vuma was lodged a month after the respondent received the funds and that final payment to Mr Vuma was made during September 2019, which is approximately 5 (five) months after receipt of the monies. The respondent regards this time delay not to be material, considering that Mr Vuma was informed that there would be a delay in payment, as the books of account were under audit, and as this fell within the period during which the respondent was winding down his firm. Regrettably no contemporaneous documents were placed before the court to support this explanation. There is thus no indication as to when the respondent engaged with Mr Vuma or when the books were sent to the auditors. The explanation compounds the respondent's problems as the accounting records should never be unavailable to the respondent

- a situation which in and of itself breaches the rules.

[70] The respondent further disputes that he is liable to account to Mr Vuma. He explains that this is so as the cost had yet to be taxed and paid, and as such the matter has not been brought to finality. The reasoning by the respondent in this respect is unsound. If an attorney undertakes to act for a client and receives money on behalf of her client, it is his duty to communicate to his client as soon as possible what he has done and what monies have been received on the client's behalf.

[71] The ill-fated nature of the respondent's contention is further

illustrated by the fact that the amount paid out to Mr Vuma is substantially less than the amount received by the respondent. Mr

Vuma is entitled to be accounted to and informed as to how the lesser amount paid to him was calculated, what amounts were deducted and the reasons for such deductions. Notwithstanding the matter not being finalised, the respondent had a duty, in terms of the applicable Rules, to not only inform Mr Vuma of the receipt of the funds but to also properly account to Mr Vuma within a reasonable time. It might be so that the delay of 5 (five) months in making payment to Mr Vuma is not excessive, but the failure by the respondent to account to Mr Vuma cannot be excused.

## Cooperation with the council

[72] Section 70 of the Attorneys Act and Section 87(5)(a) of the LPA

provide that a legal practitioner must, at the request of the council or the board or the person authorised by the council or the board, produce for inspection a book, document or article which is in the possession, custody or under the control of that legal practitioner or such employee, which book, document or article relates to the Trust account practice or former Trust account practice of such legal practitioner, and that such legal practitioner may not refuse to produce same.

[73] Pursuant to the respondent's offending conduct, and during late 2016 into early 2017, the Law Society attempted an inspection of the respondent's practice. The Law Society was however unable to conduct such inspection and the respondent failed to revert to Ms Kaserera. The respondent disputes that he failed to cooperate with the inspection in contravention of Section 70 of the Attorneys Act, on the basis that he was unaware of the messages left for him, that the Law Society used the incorrect e-mail address and that the respondent was of the view that since he did not hear back from the Law Society, that all material concerns had been addressed.

[74] The respondent contends that correspondence was not received as his email address changed. The Law Society was only so informed after attempts were made to engage the respondent. It is the respondent's

responsibility to ensure that the Law Society is throughout in possession of his updated contact details. As such, although this

might explain why some correspondence did not come to the respondent's attention, it does not exonerate the respondent.

[75] Although it might be plain from the common cause facts that the

respondent did not blatantly attempt to obstruct the inspection by the Law Society, the respondent did not actively assist and engage the Law Society as one would have expected of a senior practitioner such as the respondent. The respondent's conduct therefore amounts to a failure to cooperate with the Law Society and Ms Kaserera.

## Disciplinary Proceedings

[76] In terms of Rule 10.3 of the Code of Conduct, an attorney shall  
comply timeously with directions from the council.

[77] During mid-2018 the respondent was called before the Disciplinary

Committee of the Law Society for his failure to comply with his statutory obligations in respect of filing auditor's reports,

fidelity fund certificates and membership fees.

[78] Although the disciplinary hearing preceded communication between the respondent and the Law Society dated 25 June 2018 the respondent intimated that “I will not contest the charges against me and will in fact plead guilty thereto”, the respondent contests that he was informed timeously of the disciplinary hearing set for 24 October 2018. He however accepts that he was informed of the outcome of the hearing on 16 November 2018.

[79] According to the letter addressed to the Law Society on 23 October 2018, the basis for his non-attendance was not short notice, but that he was unavailable due to his judicial responsibilities. As borne out by the facts, this was not the first occasion on which the disciplinary proceedings could not proceed due to the respondents unavailability or at his request. That being so, there is no evidence indicating when exactly the respondent was informed of the hearing set for 24 October 2018. The non-attendance by the respondent cannot be properly assessed in the absence of clarity as to when the respondent was informed of the continuation of the disciplinary hearing. In the event that short notice was provided to the respondent a further indulgence would have been justified. As such I am not persuaded that Rule 10.3 was breached by the respondent.

[80] It is however evident that upon learning of the disciplinary proceedings instituted against him in mid-2018, the respondent did not actively engage the Law Society. In his supplementary affidavit the respondent explains that he could not engage the Law Society,

owing to his absence due to his judicial commitments. From the respondent’s statement that he took a decision to close his

practice in 2018, it can be inferred that he did not see the need in light of his intention to close his practice.

[81] It cannot be accepted that the respondent failed to actively engage the Law Society due to his judicial engagement. Having occupied the position as president of the Law Society, as well as vice-chairperson of the Fidelity Fund, the respondent is well acquainted with the Law Society’s members of staff, including the Head of the Council’s Disciplinary Department and the legal officers employed in said department. Therefore the respondent could have, with ease, communicated with these officials by way of e-mail or by telephone. The respondent’s failure to engage with the Disciplinary Committee indicates a lack of insight regarding the seriousness of his contraventions and the importance of ensuring compliance with the relevant governing provisions.

[82] Prompted as to what the reasons were for failing to remedy his transgressions upon learning of being found guilty on 16 November

2018 and bearing in mind that this was a second conviction, the respondent explained that he first grappled with the fact that he had been found guilty in absentia, and that he experienced this as unfair. Despite this he decided not to be an obstructionist and to await the Council's decision. He further indicated that he believed that when the Council was appraised of the fact that he was in the process of closing his practice, nothing further would come of the matter.

[83] In conclusion he submitted that he did remedy his transgressions in instructing the bookkeepers and auditors to round up his practice and to file the outstanding audits. The steps taken by the respondent to round up his practice were insufficient in the circumstances as same took him over three years. The respondent should and could have arranged for the submission of his outstanding audit reports to the Council immediately. The respondent further should and could have ensured that his subsequent audit reports were submitted to the Council timeously and ceased practicing as an attorney immediately pending the issuing of his fidelity fund certificate.

[84] A practitioner cannot knowingly contravene a governing rule, comply with it later and then adopt the attitude that his transgressions should be overlooked as if they never occurred

Second stage: Is the respondent a fit and proper person to continue practicing?

[85] The requirement of being a fit and proper person is not defined and described in legislation. This is left to the interpretation of and application by seniors in the profession, and ultimately the court. Attorneys ought to, at the very least, have the following qualities: integrity (meaning impeccable honesty or antipathy to doing anything dishonest or irregular for the sake of personal gain); objectivity (no irrelevant consideration whatsoever should bear upon one's judgment); dignity (practitioners should conduct themselves in a dignified manner and should also maintain the dignity of the court); the possession of knowledge and technical skill; a capacity for hard work; respect for legal order and a sense of equality or fairness.[7]

[86] It has been said that "no profession offers a surer path to affluence and influence" than the legal one. A large number of attorneys believe that the life they have chosen is the best one because it offers opportunity for wealth and prestige, and some attorneys do what it takes despite their own moral character.[8]

[87] The first Chief Justice of the Constitutional Court, Judge Mohammed, remarked as follows:

*"... [T]he ethical objectives of the law contain the life blood of a nation..."[9]*

[88] The respondent is not a young attorney who failed to run his practice efficiently due to inexperience. The respondent is exactly the opposite: he knew what the governing rules were and what was expected

of him. He was at the head of the governing body and surprisingly, and despite the challenges faced in other years, during the said tenor filed his auditor's report timeously and possessed a fidelity fund certificate. Despite knowing what was required of him as an attorney he contravened the applicable rules although intermittently, consistently. Not even a finding of guilt could cause the respondent to remedy his offending ways in respect of the belated filing of his auditor's reports and practising without a fidelity fund certificate. Only when the proverbial 'shoe pinched' and once this application was served were the transgressions remedied

[89] As stated. by the Supreme Court of Appeal in the matter of Johannesburg Society of Advocates and Another v Nthai and Others[10] referring to S v Matyityi:-[11]

*"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. There is no indication that any of this, all of which was peculiarly within the respondents' knowledge, was explored in this case."*

[90] As held by the Supreme Court of Appeal and although aforementioned

was stated of an accused person in the context of criminal proceedings, those considerations similarly apply to the present matter and the context.

[91] In view of the fact that the respondent made no attempts to rectify

the offensive conduct, even after having been advised of the outcome of the disciplinary hearing in November 2018, thereby effectively

permitting another a year and a half to pass before jumping into action when this application was served, alternatively on the

respondents version he took 3 years to compile the outstanding reports and submit same shortly after this application, leaves little

room for a finding that the respondent is truly remorseful. Therefore, although the respondent was aware of the fact that he was

administering his Trust account in contravention of the Society's rules, the respondent has no real appreciation of the seriousness of the transgression. The respondent knew that he should file auditor reports timeously and that he ought not to practice without a fidelity fund certificate; was liable to pay membership fees and account and make payments to clients timeously, but regarded same not to be overly serious to attend thereto.

[92] The transgressions in respect of the non-payment of membership fees

and the belated accounting to clients, although they may not on their own have been serious, adds insult to injury and this matter must be decided on the totality of all the evidence.

[93] Courts have repeatedly expressed themselves as to the conduct required of practitioners in proceedings of this nature.[12] An approach to the proceedings contrary to the principles referred to hereafter in itself constitutes unprofessional conduct and a separate, substantive ground for a practitioner's removal from the roll or suspension from practise. The following principles inter alia apply:

93.1 From the nature of disciplinary proceedings, it follows that a respondent 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;[13]

93.2 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;[14]

93.3 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 engaging with the substance of the complaint; and a legal practitioner should not, instead of dealing with the issues, launch an attack on the Council, accuse the accuser and seek to undermine his/her controlling body without cause.

[94] The respondent's participation in the present application is contrary to the principles summarised above. Instead of a frank disclosure, the respondent's participation is characterised by him attempting to avoid or play down the seriousness of his transgressions. In doing so, he has not offered proper explanations

of his misconduct, has sought to blame others and has attempted to lay blame at the door of the erstwhile Law Society and his chosen

auditors.

[95] In *Law Society, Northern Province v Mogami and Others*[15] and also repeated in *Law Society of Northern Province vs Sonntag*[16] it was stated:

*“Instead of dealing with the issues they launched an unbridled attack on the applicant. It has become a common occurrence for persons accused of wrong doing, instead of confronting the allegations, to accuse the accuser and seek to break down the institution involved. This judgment must serve as a warning to legal practitioners that courts cannot countenance this strategy. In itself it is unprofessional’*

[96] Noticeable is that the respondent’s practice and compliance

worsened more and more every year, whilst the respondent pursued his personal ambitions. This came at the expense of his clients and the tax paying public. It can therefore not be concluded that the respondent’s offending conduct was a momentary lapse of judgment. The respondent’s offending conduct, together with his lack of action, investment and engagement post becoming aware of the disciplinary action pending, and later the disciplinary sanction, demonstrate characteristics of a person lacking responsibility to those he serves.

[97] It remained for the respondent to explain his conduct. It was for the respondent to take the court into his confidence and to demonstrate why he is still a fit and proper person, notwithstanding the offensive conduct. Although the respondent placed little before the court in this respect, the respondent’s failure to appreciate the extent of his non-compliance and fulfil his statutory responsibilities cannot be said to be a permanent character flaw.

Third stage: Sanction

[98] In the final stage it has to be considered whether the respondent

should be removed from the roll of attorneys or whether an order suspending him from practice would be a sufficient sanction.

[99] Considering the severity of an order striking the respondent from the roll, thereby effectively ending his professional career, a court should be satisfied that suspension from practice will not achieve the objective of the court’s supervisory power over the conduct of attorneys generally and the respondent in particular.

[100] It does not mean that where a court finds that an attorney is unable to conduct himself or herself completely within the ambit of the governing rules that such attorney should be struck off the roll as a matter of course. The converse being - it does not follow that striking off is not an appropriate order.[17]

[101] Removing an attorney from the roll for misconduct is serious and has far reaching implications. When removed from the roll it is anticipated, that the attorney will never be permitted to practise again because the misconduct complained of is of such a serious nature that it manifests a character defect and lack of integrity, rendering the person unfit to practise. If a court is of the view that after a period of suspension the person concerned will be fit and proper, the appropriate order would be one of suspension. In such circumstances

an order of suspension must be conditional upon the cause of unfitness being removed.[18]

[102] Where the Court finds the legal practitioner guilty of unprofessional conduct where such conduct does not make him unfit to continue to practise, this does not mean that the Court is powerless. The Court may discipline the legal practitioner by suspending him from practise with or without conditions or by reprimanding the legal practitioner.[19]

[103] The respondent initially raised a preliminary objection that there is lack of authority on the part of the applicant to bring this application, alternatively that the application is ultra vires the existing authority.

[104] What is bemoaned was a single sentence in the founding affidavit stating that the respondent's name should not remain on the roll of attorneys, but the resolution taken by the Council was to apply for a suspension. As such the respondent contended that the 'founding affidavit' is ultra vires the resolution.

[105] Van Dijkhorst J in *Prokureursorde van Transvaal v Kleynhans* held that [20]:

*"Hierdie Hof het inherent die jurisdiksie om te beslis oor die geskiktheid van prokureurs. Sy jurisdiksie ontleen hy nie uitsluitlik aan a.22 van die Wet op Prokureurs nie. Law Society of the Cape of Good Hope v C 1986 (1) SA 616(A) op 638 C tot 639 F. Kyk ook Pesskin v The Incorporated Law Society 1966 (3) SA 719(T), waarin beslis is dat die Hof inherente jurisdiksie het om prokureurs toe te laat. Dit volg dat waar hierdie Hof hierdie bevoegdheid het, die Hof ook die applikant kan toelaat om die nodige gegewens voor hom te plaas. Hierdie Hof het die bevoegdheid om sy eie prosedure te reël. Dit is per slot van rekening 'n dissiplinêre ondersoek, nie 'n siviele geding nie. Die vraag of die jurisdiksie wat die applicant aan a. 22 van die Wet op Prokureurs ontleen geldig is, is dus nie wesenlik nie. Die geskilpunte draai om die geskiktheid van die respondent om as prokureur te praktiseer nie om die applikant se locus standi nie..."*

[106] The proceedings could, notionally, be undertaken without the participation of the Council and even against its wish.[21] Attacking the Council's resolution will not prevent the Court's exercise of its inherent disciplinary powers. The respondent's

attempts to avoid accounting to the Court for his misconduct reflects negatively upon his integrity.

[107] The respondent's counsel argued for a mere cautioning and reprimand, together with the attendance by the respondent of practice management training, as envisaged by Section 84(1) of the LPA. The cautioning and reprimand even if accompanied by the compulsory attendance of management would be wholly inappropriate. Such a sanction would not reflect the seriousness of the misconduct involved. The respondent is not a junior practitioner unaware of what is required to effectively run his practice within the ambit of the governing rules, therefore needing lectures on how it should be done.

[108] The respondent is a senior attorney who enjoyed positions of authority within the Law Society, and who has previously, although some 10 (ten) years ago, been reprimanded for non-compliance of the very same conduct. In his position as an acting judge (since 2013 and until recently), the respondent is the very person the public trusts to uphold the rule of law. Considering the continuous nature of the offending conduct, the respondent's lack of remorse pursuant to

being found guilty by the Law Society, and only dealing with the bulk of the transgressions once this application was served on him, the question begs whether a suspension is appropriate at all.

[109] Prompted as to why the respondent should be suspended from practice rather than being struck from the roll, the respondent in his supplementary affidavit argued that the Council merely sought a suspension and that striking him from the roll is reserved for the more serious transgressions such as theft, fraud, misappropriation of trust funds etc, and transgressions where intent, gross negligence or dishonesty is an element. This argument does not assist the respondent, as he clearly intentionally and knowingly breached the governing rules and persisted to practice, which conduct amounts to gross negligence. The respondent in his supplementary affidavit conceded that a firm, yet considerate sanction would be that of a suspension.

[110] In consideration of the appropriateness of the penalty, the possibility of a repetition of the conduct complained of must be taken into account.[22] Although the court has a discretion, a suspension holds the potential hazard to the public, of attorneys being enabled to practice without having to satisfy either their professional organisation or the court that they have in fact reformed and have become fit and proper to practice again. As held in *Hewetson v Law Society of the Free State*[23] the discretion to suspend must be conservatively exercised. Even in cases which do not involve dishonesty, in order to stem an erosion of professional ethics, the court should adopt a conservative rather than a kid-glove approach. A court should therefore not be influenced by maudlin sympathy in considering whether suspension rather than striking off is the appropriate remedy. After all, its main consideration is to protect the public, not to feel sorry for the person whose conduct has fallen short of the mark.[24]

[111] The respondent's transgressions were serious, particularly when viewed in their totality, and can therefore not be gainsaid. The question is thus whether these transgressions are serious enough to warrant the penalty of striking off. In the present instance a penalty of striking off might be too severe, considering that the offending conduct was largely administrative in nature, and does not disclose a permanent character defect in the respondent. However, the

respondent's misconduct was continuous and displayed a complete lack of insight justifying specific protection of the public calling for additional measures.

[112] The only redeeming feature of the respondent's conduct was that he eventually closed his practice and filed his closing auditors reports on 13 March 2020. Although we were not told so this conduct may be a self imposed sanction and we will assume, it to be so in his favour, that he did so to show contrition for his transgressions. We

will thus order that the suspension run from the date on which he filed his closing audit reports.

#### COSTS

[113] Having found that the respondent is guilty of unprofessional conduct which merits a suspension from practice, and given that the Act grants the council no power to impose such a sanction, the Council was left with no alternative course of action but to pursue the current proceedings against the respondent.

[114] It is customary for a respondent in matters such as this to be ordered to pay the cost of the council on an attorney-and-client scale. I see no reason to deviate from this principle.[25]

#### ORDER

[115] For these reasons the following order is made:-

1. Steven Anthony Thobane (hereafter referred to as "the respondent") is suspended from practice as an attorney for a period of 18 (eighteen months), to be calculated from 13 March 2020.
2. The respondent is precluded from practicing as an attorney for his own account, either as a principal or in partnership or in association or as a director for a further period of 24 (twenty four) months from[DGC1] the expiry of the suspension in 1 above.
3. Should the respondent, after the expiry of the period referred to in 1 and 2 above, elect to practice for his own account, either as a principal or in partnership or in association or as a director, the respondent shall before so doing, satisfy the High Court within the jurisdiction in which the respondent so intend to practice, on application that he should be permitted to practice for his own account.
4. The respondent is to pay the cost of the applicant on an attorney-and-client scale.

I agree,

OPPERMAN J

DATE OF HEARING

: 9 DECEMBER 2020

DATE OF FURTHER EVIDENCE RECEIVED : 4 MARCH 2021

DATE OF JUDGMENT

: 14 MAY 2021

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(WITHDREW on 1 FEBRUARY 2021)

: IN PERSON

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[1]

No. 28 of 2014. 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.

[2]

Jasat v Natal Law Society 2000

[3] SA 44 (SCA); General Council of the Bar of South Africa v Jiba and Others 2019 (8) BCLR 919 (CC) at par 20; Jiba and Another v General Council of the Bar of South Africa and Another; Mrwebi v General Council of the Bar of South Africa 2019 (1) SA 130 (SCA) at par 6; Malan and Another v Law Society, Northern Provinces

[2008] ZASCA 90; 2009 (1) SA 216 (SCA) at par 4

[3] Section 84(2) of the LPA

[4] The corresponding provision under the Rules for the Attorneys' Profession was Rule 22.24

[5] Formerly Rule 68.7 of the Rules of the Transvaal and presently Rule 54.12 of the LPC Rules

[6] Formerly Rule 68.8 of the Rules of Transvaal and presently Rule 54.13 of the LPC Rules

[7]

Du Plessis 'The Ideal Legal Practitioner (From an Academic Angle)' 1981 De Rebus at 424-7. See also M Slabbert 'The Requirement of being a "fit and proper" person for the legal profession' PER-PELJ 2011 (14) 4 p216

[8] M Slabbert 'The Requirement of being a "fit and proper" person for the legal profession' PER-PELJ 2011 (14) 4 p222 to 223

- [9] M Slabbert ‘The Requirement of being a “fit and proper” person for the legal profession’ PER PELJ 2011 (14) 4 p224
- [10] (879/2019; 880/2019) [2020] ZASCA 171 (15 December 2020) at para [82]
- [11] [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) at par [14]
- [12]
- Prokureursorde van Transvaal v Kleynhans 1995 (1) SA 839 (T) at 846G-H and at 853E-H; Law Society of the Northern Provinces v Mogami and Others 2010 (1) SA 186 (SCA) at 195 – 196 par [26]
- [13] Prokureursorde van Transvaal v Kleynhans 1995
- (1) SA 839 (T) at 853G-H;
- [14] Hepple v Law Society of the Northern Provinces 2014 JDR 1078 at par 9.
- [15] 2010(1) SA 186 (SCA) at para 26
- [16] 2012(1) SA 372 (SCA)
- [17] Malan and Others v Law Society, Northern Provinces
- [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at par [11]
- [18] Malan v Another v Law Society, Northern Provinces
- [2008] ZASCA 90; 2009
- (1) SA 216 (SCA) at par 4 to 8
- [19] Malan v Another v Law Society, Northern Provinces
- [2008] ZASCA 90; 2009
- (1) SA 216 (SCA) at par 4 to 8
- [20] 1995
- (1) SA 839 (T) at 851 E to G
- [21] Law Society of the Northern Provinces v Soller 2015 JDR 0339 (GP) at p 7.
- [22] Law Society of the Cape of Good Hope v Budricks 2003 (2) SA 11 (SCA) at par [7]
- [23] 2020
- (5) SA 86 (SCA) at par [51]
- [24] Malan and Another v Law Society, Northern Provinces
- [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at par [11]
- [25] Botha v Law Society, Northern Provinces

[2008] ZASCA 106; 2009 (1) SA 227 (SCA) at 236F and Law Society of Northern Provinces v Dube

[2012] 4 All SA 251 (SCA)

[DGC1]my thinking is if we are talking in months to continue to do so and not jump between months and years.

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