

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

Case No: 54153/2013

In the matter between:

28/11/2016


THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

GREAT CEASAR NGANGAMSHA BUNGANE

Respondent

(1)	REPORTABLE: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(2)	OF INTEREST TO OTHER JUDGES: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(3)	REVISED <input checked="" type="checkbox"/>
	28/11/2016
	DATE
	
	SIGNATURE

JUDGMENT

HF JACOBS, AJ:

[1] The respondent was admitted and enrolled as an attorney of this Court on 20 October 1987. On 6 June 2014 this Court (Fabricius J and Vorster AJ) granted an order suspending the respondent in his practice as an attorney and granted an order in the following terms:

2. *That the respondent immediately surrender and deliver to the registrar of this Honourable Court his certificate of enrolment as an attorney of this Honourable Court.*
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, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.*
4. *That the respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof.*
5. *That Johan van Staden, the head: members affairs of applicant or any person nominated by him, be appointed as curator bonis (curator) to administer and control the trust accounts of respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78(2A) of Act No. 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:*
 - 5.1 *immediately to take possession of respondent's accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which respondent was acting at the date of this order;*

- 5.2 *subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against respondent in respect of monies held, received and/or invested by respondent in terms of section 78(1) and/or section 78(2) and/or section 78(2A) of Act No 53 of 1979 (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);*
- 5.3 *to ascertain from respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;*
- 5.4 *to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditors has a claim in respect of monies in the trust account(s) of respondent and, if so, the amount of such claim;*
- 5.5 *to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;*
- 5.6 *having determined the amount which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;*

- 5.7 *in the event of there being any surplus in the trust account(s) of respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 78(3) of Act No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by respondent to applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;*
- 5.8 *in the event of there being insufficient trust monies in the trust banking account(s) of respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Attorneys Fidelity Fund;*
- 5.9 *subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and*
- 5.10 *to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.*
6. *That respondent immediately delivers her accounting records, records, files and documents containing particulars and information relating to:*
- 6.1 *any monies received, held or paid by respondent for or on account of any person while practising as an attorney;*

- 6.2 *any monies invested by respondent in terms of section 78(2) and/or section 78(2A) of Act No 53 of 1979;*
- 6.3 *any interest on monies so invested which was paid over or credited to respondent;*
- 6.4 *any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;*
- 6.5 *any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;*
- 6.6 *any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Act, No 57 of 1988;*
- 6.7 *any company liquidated in terms of the Companies Act, No 61 of 1973, administered by respondent as or on behalf of the liquidator;*
- 6.8 *any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by respondent as or on behalf of the liquidator; and*
- 6.9 *respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.*
7. *That should respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for an to take possession thereof wherever they may be and to deliver them to such curator.*
8. *That the curator shall be entitled to:*

- 8.1 *hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;*
- 8.2 *require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof.*
9. *That respondent be and is hereby removed from office as:*
- 9.1 *executor of any estate of which respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);*
- 9.2 *curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administrator of Estates Act, No 66 of 1965;*
- 9.3 *trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;*
- 9.4 *liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;*
- 9.5 *trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;*
- 9.6 *liquidator of any close corporation appointed in terms of section 74 of the Close Corporations Act, No 69 of 1984.*
10. *That respondent be and is hereby directed:*
- 10.1 *to pay, in terms of section 78(5) of Act No. 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;*

- 10.2 *to pay the reasonable fees of the auditor engaged by applicant;*
- 10.3 *to pay the reasonable fees and expenses of the curator, including travelling time;*
- 10.4 *to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid; and*
- 10.5 *to pay the costs of this application on an attorney-and-client scale.*
11. *That if there are any trust funds available the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof.*
12. *That a certificate issued by a director of the Attorneys Fidelity Fund shall constitute prima facie proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.*
13. *That the suspension order shall lapse immediately on presentation of a valid Fidelity Fund Certificate to the Registrar of the High Court.*
14. *That all affidavits filed by the parties herein to date of this order be consolidated.*
15. *That the matter be postponed sine die.*
16. *The costs of the postponement are reserved."*

[2] The chronology gleaned from the papers show the following:

[2.1] This application was served on the respondent personally on 4 September 2013;

[2.2] The respondent filed his answering affidavit on 23 October 2013;

[2.3] The applicant filed its replying affidavit on 3 April 2014;

[2.4] The matter was enrolled for hearing on 6 June 2014;

[2.5] On 6 June 2014 the respondent sought a postponement through a substantive application he brought on the basis that he required an indulgence to file an answering affidavit to the applicant's supplementary affidavit which the applicant filed on 17 March 2014. In terms of the order quoted above the respondent was suspended from practice as an attorney and a curator *bonis* was appointed to administer and control his trust account;

[2.6] On 17 May 2016 the applicant filed a further supplementary affidavit.

[2.7] The respondent has failed to file answering affidavits in response to any of the supplementary affidavits or subsequent to the order of 6 June 2014.

[3] According to the supplementary affidavit of the applicant filed on 17 May 2016 the applicant commissioned Mr Swart to conduct a further investigation into the trust accounting records of the respondent's firm. Mr Swart furnished the applicant with a report dated 29 September 2014. According to Mr Swart's report the respondent's trust accounting records did not reflect the correct transactions on the balances of individual trust creditors. The respondent's trust creditors accounting records were found to be unreliable and the impression gained by Mr Swart was that those records were merely kept to lend the records a modicum of compliance with the legal provisions applicable to the administration of trust creditors' accounts. Mr Swart further found that the accounting records reflected a trust shortage and that the absence of proper recordkeeping creates the risk for trust creditors as well as the Attorneys Fidelity Fund. Mr Swart, therefore, recommended that the applicant should consider to withdraw the initial approval of an unqualified accountant's report of the respondent's firm for the periods ending February 2011, February 2012 and February 2013.

[4] As stated earlier the respondent has not filed any supplementary affidavits to address the issues raised in the affidavit (and the annexures thereto) delivered on behalf of the applicant on 17 May 2016. Before us, therefore, the findings of Mr Swart, his recommendation and the evidence about the state of affairs of the respondent's trust account stand unchallenged.

[5] The initial application for striking off and suspension of the respondent was premised on not less than 16 (sixteen) complaints. These complaints are:

[5.1] The complaint by Mr M N Ramphomane who claimed that he instructed the respondent to lodge an appeal against a finding made against Mr Ramphomane by the Western and Gauteng Taxi Council which mandate the respondent failed to execute notwithstanding the fact that an amount of R10 000.00 was paid to the respondent in advance to perform the work. In response to the complaint the respondent was called upon to appear before the applicant's disciplinary committee on 16 May 2012 and again on 25 July 2012. The hearing did not proceed due to the respondent's unavailability. The respondent was again called upon to appear before the applicant's disciplinary committee on 12 September 2012 but failed to attend the disciplinary hearing. The disciplinary committee ruled that the matter should be referred to the applicant's counsel in terms of the provisions of Rule 101 of the applicant's rules.

[5.2] A complaint by Mr K A Molefe whose complaint was that the respondent was instructed to attend to the administration of the estate of the late brother of Mr Molefe. Mr Molefe expected an amount of R160 175.00 from his late brother's

pension fund but only received an amount of R18 000.00 from the respondent. The respondent initially failed to react to the complaint but later advised the complainant that his late brother had five children who also had to be consulted. The respondent undertook to revert to the complainant and the applicant following a consultation which he said he would have with the children of the deceased. In response to the complaint the respondent was called upon to appear before the applicant's disciplinary committee also on 16 May 2012 and 25 July 2012 which hearings did not proceed due to the respondent's unavailability. Like the earlier complaint the respondent was again called upon to appear before the applicant's disciplinary committee on 12 September 2012. The respondent failed to attend the hearing and as what happened with the previous charge, the action was referred to the applicant's council in terms of the provisions of Rule 101 of the applicant's rules.

- [5.3] The complaint of Cass Pieterse Incorporated on behalf of the estate of the late N B Mbokoto followed after the respondent was appointed executor of the deceased estate of Mr N B Mbokoto. During 2007 the respondent's firm was approached by the heirs of Mr Mbokoto to assist them in finalising of the administration of the estate due to the fact

that they were not satisfied with the manner in which the respondent handled the matter. According to Cass Pieterse Incorporated the respondent has failed to answer to correspondence and messages addressed to him dating as far back as June 2009 and that the respondent received money in favour of the deceased's estate for which he failed to account. On 31 January 2011 the respondent advised that another person was dealing with the matter and that that person had left the respondent's employ delaying a timeous response to the complaint. The respondent further informed that the pension fund and the insurance benefits of the deceased had been paid to the children of the deceased as they were beneficiaries of such policies. The respondent informed that the only sum he received was R25 000.00 which emanated from a life policy. The respondent undertook to resolve the matter with the complainants and was called upon to appear before the applicant's disciplinary committee on 16 May 2012 and 25 July 2012. As stated earlier, the disciplinary hearings did not proceed due to the respondent's unavailability and the respondent was again called to appear before the applicant's disciplinary committee on 12 September 2012 which resulted in referral of the matter to the applicant's council in terms of Rule 101 of its rules.

[5.4] The complaint of Mr L Mokheche followed after the complainant instructed the respondent to institute a claim on his behalf against the Road Accident Fund. The respondent failed to report to his client regarding progress in the matter and according to the records of the Road Accident Fund the claim has prescribed. The respondent was called upon to appear before the applicant's disciplinary committee on 16 May 2012 and 25 July 2012 but was unavailable to do so. The respondent was again called upon to appear before the applicant's disciplinary committee on 12 September 2012 but failed to attend the disciplinary hearing which was followed by a referral of the complaint to the applicant's council in terms of the provisions of the applicant's Rule 101.

[5.5] The complaint by Van Velden-Duffey Incorporated was that the respondent failed to effect payment of Van Velden-Duffey Incorporated's statement of account for services rendered to the respondent's firm as correspondent attorneys.

[5.6] Mr R G Ramafoko appointed the respondent as executor in the estate of Mr J B Ramafoko and the Master issued letters of executorship to the respondent during 1999. The respondent was alleged to have failed to administer the deceased estate and has failed to deal with the two

immovable properties in the estate to the detriment of the heirs.

[5.7] Ms S Mankayi instructed the respondent during March 2007 to attend to the administration of the estate of the late T R Qolo. The respondent received a sum of R563 000.00 from an insurance policy payable to the estate of the deceased and has failed to effect payment in favour of Mrs Mankayi. On 28 February 2011 the respondent confirmed that three of his staff members dealt with the matter and that he acted as a supervisor. The respondent informed that a certain Ms Moyo who was on maternity leave dealt with the pension fund claims and advised that the respondent's statement of account in respect of work done to secure the letter of executorship would be taxed. The respondent further informed that the complainant took an amount of R271 300.00 from the amount of R563 000.00 collected.

[5.8] The complaint of Mr M G Masike was that he instructed the respondent to act on behalf of his brother who is serving a sentence in Groenpunt Prison and that Mr Masike paid the respondent the sum of R15 000.00 in addition to an amount of R5 700.00 for transcriptions. The respondent has failed to furnish any receipt in respect of the payments received.

[5.9] Mr M Somnjwaxa complained to the applicant that he instructed the respondent to attend to an appeal on his behalf. He furnished the respondent with the necessary transcription and R5 000.00 deposit. The complaint is that the respondent failed to execute Mr Somnjwaxa's instructions and failed to report to him regarding any progress in the matter.

[5.10] Ms M A Makhalelele complained that she instructed the respondent to act on behalf of her brother who was serving a prison sentence. Ms Makhalelele paid the respondent an amount of R58 700.00 for which the respondent failed to furnish a receipt. It was alleged on behalf of Ms Makhalelele that the advocate concerned was paid R6 000.00 and the balance of the monies paid by her to the respondent was not accounted for.

[5.11] Mr M B Tenteza complained to the applicant that he instructed the respondent to attend to settle disputes in his divorce proceedings. The respondent acted on behalf of Mr Tenteza's wife. Mr Tenteza paid an amount of R160 000.00 into the respondent's firm trust account, R150 000.00 of which was in respect of settlement and R10 000.00 in respect of the respondent's legal fees. It was alleged by Mr Tenteza that the respondent failed to effect

payment of the R150 000.00 to his wife and failed to respond to correspondence.

[5.12] Mr S P Ntlhopi complained that an amount of R50 000.00 was paid to the respondent to assist Mr Ntlhopi in purchasing a motor vehicle. Mr Ntlhopi was uneducated and did not have the confidence to purchase the vehicle on his own. The complaint was that the respondent failed to deliver the vehicle and also refused to repay to Mr Ntlhopi the sum of R50 000.00. There was a later dispute premised on the allegations of the respondent that he paid a certain Mr Mdlalose the sum of R50 000.00.

[5.13] Ms G Sello complained to the applicant that her late husband instructed the respondent to attend to a property related transaction on their behalf following the sale of a property by a certain Mr Tlou for which the sum of R43 000.00 was paid to the respondent. The respondent failed to draft the agreement for the parties to sign and failed to repay the money paid to him.

[5.14] Mr L O Tlong complained that he purchased a RDP house from a certain Mr Madima for an amount of R18 000.00 of which an amount of R14 000.00 was paid to the respondent. The amount of R4 000.00 was still due and payable to

Mr Madima but only upon registration of transfer. On 31 August 2012, so the complaint went, Mr Tlong sold his RDP house to one Ms Motaung for an amount of R20 000.00. The money was, according to the complaint, paid in cash to the respondent and that Ms Motaung took occupation of the house on October the 8th 2012. When Mr Tlong called upon the respondent's office to collect the purchase price and the balance of the initial purchase price, the respondent informed them that the applicant took his accounting records and that the respondent's firm's cheque book and that he could not effect payment in their favour. The respondent then gave Mr Tlong R2 000.00 in cash and Mr Madima R500.00 cash. On 23 November 2012 the respondent furnished Mr Tlong with a cheque but the cheque was not met by the respondent's bank.

[5.15] Ms M C Leepile complained that during September 2003 she instructed the respondent to act on her behalf against the Road Accident Fund following injuries she had sustained in a motor vehicle accident. During 2009 it came to her attention that an amount of R189 158.27 was paid by the Road Accident Fund to the respondent's firm's banking account on 7 May 2008 but that the respondent failed to effect payment in favour of Ms Leepile. According to the respondent's eventual communication and

response to letters addressed to him he informed that the expenses incurred exceeded the amount he received and offered to cut his fees by R50 000.00 and paying the same to the complainant. In this respect the respondent was called upon to appear before the applicant's disciplinary committee on 26 October 2011. The hearing did not take place due to the respondent's unavailability. The hearing was postponed to 23 November 2011 and again postponed to 15 February 2012. On 15 February 2012 the hearing stood down until 2 March 2012. The respondent failed to attend the disciplinary hearing on 2 March 2012 and the hearing was postponed to 26 March 2012. The hearing did not proceed on 26 March 2012 due to the respondent's unavailability. The respondent was thereafter again called upon to appear before the applicant's disciplinary committee on 16 May 2012 and again on 25 July 2012. Again, the hearings did not take place due to the respondent's unavailability. The respondent was thereafter again called upon to appear before the applicant's disciplinary committee on 12 September 2012. The respondent failed to attend the hearing and the committee ordered that the matter be referred to the applicant's council in terms of the provisions of its Rule 101.

[5.16] The complaint filed by Mr A Amod was that he was approached by Mr De Beer who advised that he was employed

as an attorney at the respondent's firm and that one of their clients, Mr Joubert, wanted to purchase 100 beds from the complainant that were urgently required by the mines. An order was subsequently placed and the invoice was rendered to the value of R182 400.00. It later transpired that the respondent unilaterally withdrew from a guarantee that was issued on behalf of his firm by Mr De Beer and his conduct caused the complainant, Mr Amod, to suffer financial loss.

[5.17] The complaints were later found to tally with incorrect entries in the trust account of the respondent and no record was found in the respondent's trust records for some of the transactions at all. To record the shortcomings in the respondent's trust account records here would serve no purpose and I conclude by referring to the considerable trust shortfall the audit of the respondent's trust account revealed.


[6] A singular feature of the respondent's conduct gleaned from the papers is the measure of disdain with which the respondent treated his clients, the applicant as professional body responsible for the exercise of statutory control over its members and the applicant's professional rules. His failure to attend meetings, reply to correspondence, attend to the affairs of his clients, not on an isolated occasion but continuously over years, amount to derision and is totally unbecoming a member of the attorneys profession. In my view the applicant has shown on a balance of probability that the

respondent is guilty of dishonourable and disgraceful conduct. The offending conduct of the respondent shows further, in my view, that he is not a fit and proper person to be and remain on the roll of attorneys.

[7] When the order was granted by Fabricius J and Vorster AJ suspending the respondent from practice the issue of costs was reserved for later determination. It is trite law that the applicant, a statutory body performing a statutory function is entitled to its costs on the appropriate scale irrespective of the outcome of the application. In my view the wasted costs of the postponement of 6 June 2014 should be paid by the respondent on the scale as between attorney and client. Nothing changed since 6 June 2014, on the contrary, evidence gathered by the applicant showed that in addition to the complaints levelled against the respondent his trust account was found to be in total disarray.

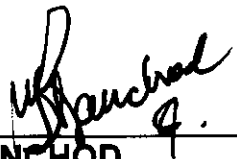
Under the circumstances the order is made:

- (1) The draft order attached hereto and marked "X" is made an order of court.
- (2) The Registrar of this court is ordered to deliver a copy of this judgment and order and a copy of the record to the Director of Public Prosecutions to consider institution of criminal proceedings against the Respondent.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree, and it is so ordered.



N RANCHOD
JUDGE OF THE HIGH COURT
PRETORIA

Date: 28 November 2016

"X"

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

Case No: 54153/2013

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

GREAT CEASAR NGANGAMSHA BUNGANE

Respondent

~~DRAFT ORDER OF COURT~~

Having read the papers filed of record and having heard the attorney for the Applicant,

IT IS ORDERED

1. That the name of **GREAT CEASAR NGANGAMSHA BUNGANE** (hereinafter referred to as the Respondent) be removed from the roll of attorneys of this Honourable Court;
2. That Respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court;

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, be authorised and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court;
4. That Respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof;
5. That Johan van Staden, the head: members affairs of applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of Respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with Respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78 (2A) of Act No. 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:

- 5.1 immediately to take possession of Respondent's accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which respondent was acting at the date of this order;
- 5.2 subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against respondent in respect of monies held, received and/or invested by respondent in terms of section 78(1) and/or section 78(2) and/or section 78(2A) of Act No 53 of 1979 (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);
- 5.3 to ascertain from Respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon respondent to furnish him, within 30 (thirty) days of the date of service of this order or

such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

- 5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of respondent and, if so, the amount of such claim;
- 5.5 to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;
- 5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;
- 5.7 in the event of there being any surplus in the trust account(s) of respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 78(3) of Act No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by

respondent to applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;

- 5.8 in the event of there being insufficient trust monies in the trust banking account(s) of respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Attorneys Fidelity Fund;
- 5.9 subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and
- 5.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:
 - 6.1 any monies received, held or paid by respondent for or on account of any person while practising as an attorney;
 - 6.2 any monies invested by respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;
 - 6.3 any interest on monies so invested which was paid over or credited to respondent;
 - 6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;
 - 6.5 any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;
 - 6.6 any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;
 - 6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by respondent as or on behalf of the liquidator;

- 6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by respondent as or on behalf of the liquidator; and
- 6.9 respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.
7. That should respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon his or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.
8. That the curator shall be entitled to:
- 8.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

- 8.2 require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
 - 8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and
 - 8.4 wind-up of the respondent's practice.
9. That Respondent be and is hereby removed from office as:
- 9.1 executor of any estate of which Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);
 - 9.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;

- 9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;
 - 9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;
 - 9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
 - 9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and
 - 9.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.
10. That Respondent be and is hereby directed:
- 10.1 to pay, in terms of section 78(5) of Act No 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;
 - 10.2 to pay the reasonable fees of the auditor engaged by Applicant;
 - 10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

- 10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
- 10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and
- 10.6 to pay the costs of this application on an attorney-and-client scale.
11. That, if there are any trust funds available the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;
12. That a certificate issued by a director of the Attorneys Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs;

BY ORDER OF THE COURT

REGISTRAR