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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION,

PRETORIA)

CASE NO: 23260/05

DATE OF JUDGMENT: 27 MAY
2016

In the matter between:-

**THE LAW SOCIETY OF THE NORTHERN PROVINCES
(Incorporated as the Law Society of the Transvaal)**

Applicant

and

THULANI ISHMAEL KHOZA

Respondent

JUDGMENT

KOOVERJIE AJ:

A. NATURE OF APPLICATION:-

1. This is an application in terms of Section 22(1)(d) of the Attorneys Act, No 53 of 1979 (*"the Act"*) for the striking off the name of the Respondent from the Roll of Attorneys of this Honourable Court, on the basis that the Respondent is no longer a fit and proper person to practise as an attorney.

B. UNOPPOSED:-

2. The Respondent, despite being informed of the date for this hearing, has failed to oppose the said application and further failed to appear before this Court. This Court is satisfied that he was given sufficient notice in respect of the date for the hearing of this matter. This application was served on the Respondent personally on the 11th June 2015.

C. BACKGROUND:-

3. The Respondent was admitted as an attorney of this Court on 6 January 2001 and commenced practice under the name *T I Khoza Attorney*, which office was situated at Office 4 and 5, 1st Floor, Lorna Court, [...]Rothsay Street, Benoni, Gauteng.
4. The Respondent had already been suspended from the roll of practising attorneys on 20 February 2006.

Complaints

5. There were at least 12 complaints lodged with the Law Society against the Respondent. The following complainants who were all clients of the Respondent at the time:

- (1) Vuyela Joyce Nongwe;
- (2) Sbongile Kate Masuku;
- (3) Kate Daphne Swanepoel obo Simone Dominic Swanepoel;
- (4) Adelaide Nosizwe Diniso;
- (5) Marryman Khulekele Maqanda;
- (6) Gabangani Absalom Masondo;
- (7) Priscilla Ledwaba;
- (8) Nicholars Zolo Modwenda and Rittah Lindiwe Ntuli;
- (9) Nohappy Cynthia Dasuke;
- (10) Maria Jabhisane Zulu;
- (11) Ncongo Nomakhosi Lydia;
- (12) Vuyelwa Nompunga.

Misconduct

6. The Applicant's case is premised on the basis that the Respondent is not a fit and proper person and should not be allowed to practise as an attorney any longer, namely that the Respondent:

- 6.1 contravened Rule 35.12 in that he failed to pay trust monies due to his clients within a reasonable time or not at all;
 - 6.2 had misappropriated trust funds and the Attorneys Fidelity Fund had to pay out claims to the respective claimants;
 - 6.3 continued to practise as an attorney after his suspension which was effective from 20 February 2006;
 - 6.4 had failed to account faithfully accurately and timeously in respect of the complainants' monies.
7. It was argued by the Applicant's counsel that the Respondent's conduct as an attorney and officer of this Court reveals a character defect which should not be tolerated.
8. The offences committed by him were serious and he no longer was a fit and proper person to practise as an attorney.

C. ANALYSIS:-

9. Having heard counsel and having read the papers, more particularly the complaints lodged with the Applicant, this Court is required to exercise its own discretion as to whether the sanction requested for by the Applicant against the Respondent is justified.

10. The Applicant had made the following submissions in relation to the Respondent's misconduct, namely:

10.1 The integrity of an attorney is paramount. He must always represent and service his clients in their best interests;

10.2 An attorney should at all times comply with the Attorneys Act and the Rules thereto;

10.3 An attorney must deal with his clients' monies and his trust account responsibly and accurately. He must account for monies received on behalf of his clients in a proper and diligent manner;

10.4 At all times, an attorney must be professional and honest.

11. This application was launched in terms of Section 22(1)(d) of the Attorneys Act, which states:

"(1) Any person who has been admitted and enrolled as an attorney may on application by the Society concerned be struck off the roll or suspended from practice by the Court within the jurisdiction of which he or she practises ...

(d) if he or she, in the discretion of the Court, is not a fit and proper person to continue to practise as an attorney."

(my underlining).

12. In ***Ma/an and Another v Law Society, Northern Provinces 2009 (1) SA 216 at 219 SCA Harms ADP*** confirmed the three stage enquiry endorsed by

the Court in ***Jasat v Natal Law Society* 2000 (3) Sa 44 SCA** at para 10, namely::

- firstly the Court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry;
- secondly, it must consider whether in the Court's discretion he is not a fit and proper person to continue to practise. This involves the weighing up of the conduct complained of against the conduct expected of an attorney (value judgment);
- thirdly, the Court must inquire whether in all the circumstances it is justified to remove the attorney from the roll of attorneys or whether the suspension from practice would suffice (degree of sanction).

13. In this instance, this Court is requested to particularly declare the Respondent as not a "*fit and proper*" person to continue to practice.

14. Insofar as the first stage of the inquiry is concerned, this Court is satisfied that the factual basis of the Respondent's misconduct has been established.

15. In order to determine whether the Applicant is a "*fit and proper*" person, the Court will have to consider his personal qualities and decided whether he is a fit and proper person in relation to such matters as the prestige. Status and

dignity of the profession, the kind of personal qualities in respect of which a Law Society has to be satisfied.

16. These considerations were set out in ***Kaplan v Incorporated Law Society, Transvaal 1981 (2) SA 762 at p 792:***

"When will such a person again qualify to be a fit and proper person to be readmitted as attorney? The simple answer seems to be: When he has shown himself to be fit and proper person in relation to the prestige, status and dignity of the profession and the responsibility, standards of professional conduct and integrity of practitioners. The prestige, status and dignity of the professional in turn relates to the person or image the profession has in the eyes of the practitioners and the Court in particular. In this connection it is not to be overlooked that the trust and confidence reposed by the public and by the Court in practitioners to carry on their profession under the aegis of the Courts must make the Courts astute to see that persons who are enrolled as attorneys are persons of dignity honour and integrity."

17. Having regard to the Respondent's conduct as an attorney, the acts of misconduct illustrated in these papers demonstrate that the Court and the public demonstrate that the Court and the public has lost the confidence and trust in the Respondent. By misappropriating trust funds, and failing to pay trust monies to certain of his clients and failing to comply with the prescribed legislation he was expected to, shows dishonesty and lack of integrity.
18. He has compromised the standard of the honesty, integrity and dignity required of an attorney in this profession.
19. The third stage of the enquiry is to determine the sanction most appropriate. In this instance the level of dishonesty and his professional conduct in dealing with trust monies and to serve his clients in their best interests warrants him to be struck off.

20. Moreover to date, the Respondent has not contested the findings made against him.

ORDER

The following order is therefore made:

The order had already been handed down at the hearing of the matter in terms of the draft order marked "X". Such order is reiterated herein and remains the order of this court.

H KOOVERJIE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I concur:

SP MOTHLE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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INSTRUCTED BY: STEGMANN'S INC. ATTORNEYS

FOR THE RESPONDENT: MKHABELA ATTORNEYS

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