



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

29/7/16.

CASE NO: Q2249/2015

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

MICHAEL TSAKANE MAHLAOLA

Respondent

JUDGMENT

MAAKANE A J

INTRODUCTION:

1. This is an application in which the Applicant seeks the removal of the Respondent's name from the roll of attorneys.
2. On 16 November 2015 the Applicant launched an urgent application with this court, seeking an order to have the name of

the Respondent removed from the roll of attorneys. In the alternative, it sought an order suspending him from practising as an attorney, pending the removal of his name from the roll of attorneys.

3. The application itself was served on Mr Mahlaola on 18 November 2015. He opposed the application and filed his answering affidavit on 7 December 2015.
4. The application was heard in the urgent court on 8 December 2015. Having heard the matter, the court ordered that the Respondent be suspended from practising as an attorney of this Court, pending application for the removal of his name from the roll of attorneys.
5. Applicant was also ordered to file his replying affidavit by 12 January 2016 and the matter was postponed to 9 February 2015. On 9 February 2015 the matter was again postponed to 9 June 2016 for final determination.

BACKGROUND:

6. The Respondent, Michael Tsakane Mahlaola ("*Mr Mahlaola*") was admitted and enrolled as an attorney of this Court on 22 August 2002.

7. He remained a non-practising member of the Applicant from 22 August 2002 to 2 January 2006.
8. During the period between 3 January 2006 to June 2007, he practised as a professional assistant at a firm of attorneys known as Fourie Fismer Incorporated.
9. From 1 July 2007, he commenced practising for his own account as a sole practitioner under the name and style of Mahlaola Incorporated Attorneys at Office No. 209, Olivetti House, 100 Pretorius Street, Pretoria.
10. On 18 December 2014 the Applicant received a complaint from Ms Sivhiwe Tracey Mphakathi (*"the complainant"*). Complainant had instructed Mr Mahlaola to assist her with a Road Accident Fund (*"RAF"*) claim. It was agreed in writing between the parties that Mr Mahlaola would be entitled to a 25% contingency fee. Mr Mahlaola thereafter failed to report to or make contact with the complainant regarding progress in the matter.
11. During or about September 2014 the complainant ultimately visited the offices of the RAF to enquire about progress in her claim. There she established that an amount of R4,626,066.00 in her favour, was paid by the RAF into the trust account of Mr Mahlaola. The payment was made on 31 July 2014. Over and

above that, a further amount of R167,887.15 was paid into the same trust account on 8 January 2015 by the RAF representing taxed legal costs again in her favour.

12. Armed with this information, the complainant during the same month visited the offices of Mr Mahlaola. During this meeting, Mr Mahlaola requested an indulgence and undertook to pay to her the money due by the end of October 2014. This was during September 2014.
13. Unfortunately this did not happen. Instead Mr Mahlaola requested another indulgence and undertook to pay her by the end of November 2014. Once again, Mr Mahlaola failed to transfer the money into her bank account on the agreed date.
14. On 10 December 2014 the complainant again visited the offices of Mr Mahlaola. This she did on invitation to a meeting by Mr Mahlaola. During this meeting Respondent sought yet another indulgence. Complainant was informed that the amount of R3,307,638.00 will be transferred into her bank account within 48 hours. She understood this to mean that payment will be made by the 12th December 2014. Once again this did not happen. Mr Mahlaola did not honour his word and no payment was made.

15. After several unsuccessful attempts to secure payment from Mr Mahlaola, the complainant ultimately sought legal assistance elsewhere. It is for this reason that she then contacted Masewawatla Attorneys (*"Masewawatla Attorneys"*), for assistance.
16. The new attorneys wrote a letter to Mr Mahlaola demanding that payment of the complainant's money be effected within 48 hours. Once again Mr Mahlaola failed to pay the money as requested.
17. This prompted Masewawatla Attorneys to launch an urgent application on behalf of the complainant to this Court seeking an order compelling Mr Mahlaola to pay the complainant the amount of money due.
18. On 18 March 2015 the matter was heard and the relief sought granted. In terms of the order agreed to between the parties, Mr Mahlaola undertook to pay to the complainant the amount owing in two instalments. The first payment of R2,000,000.00 was to be paid before or on 31 March 2015 and the second payment of R1,307,638.00 before or on 24 April 2015.
19. Notwithstanding the Court order, Mr Mahlaola failed to make the first payment of R2,000,000.00 on the due date. Instead, on 1

April 2015 he addressed a letter to complainant's attorneys requesting a further indulgence. This letter reads in part:

"We are unable to make the necessary payment at this point. We humbly request an extension until 10 April 2015 as we are anticipating to receive funds in due course. We are really trying our level best to meet your demands and we are mindful our legal obligations. Further we will never undermine your professional integrity. We are also mindful that this matter has the potential to destroy our profession."

20. On 3 March 2015 the Applicant addressed a letter to Mr Mahlaola regarding the complainant's complaint. He was specifically requested to respond thereto by 30 March 2015. Mr Mahlaola failed to respond to the letter at all.
21. During May 2015 an auditor of the Applicant, Ms P Maphumo, visited the Respondent's firm. She compiled a report dated 18 August 2015. According to the audit report, as at 28 February 2015, the Respondent's trust account had a deficit of R3,474,034.32, and the complainant's money was not in the trust account of Mr Mahlaola.

LEGAL POSITION – TEST FOR FITNESS:

22. The question whether an attorney is a fit and proper person to continue to practise as such lies in the discretion of the Court. In determining this, the Court has to conduct a three stage enquiry, namely that:

22.1 The Court must first decide as a matter of fact whether the alleged offending conduct by the attorney has been established.

22.2 If the Court is satisfied that the offending conduct has been established, a valued judgment is required to decide whether the person concerned is not a fit and proper person to practise as an attorney.

22.3 If the Court decides that the attorney concerned is not a fit and proper person to practise as an attorney, it must decide in the exercise of its discretion whether in all the circumstances of the case the attorney in question is to be removed from the roll or merely suspended from practise.

23. This test is well established and has been summarised by Harms DP in *Law Society, Northern Provinces v Mogami*¹ as follows:

"Applications for the suspension or removal from the roll require a three-stage enquiry. First the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. Second, it must consider whether the person concerned is 'in discretion of the court' not a fit and proper person to continue to practise. This involves a weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. And third, the court must enquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practice would suffice (Jasat v Natal Law Society, 2000 (3) SA 44 (SCA) ([2000] 2 All SA 310); Malan and Another v Law Society, Northern Provinces 2009 (1) SA 216 (SCA) ([2009] 1 All SA 133; [2008] ZASCA 90) at para 10)"

¹

2010 (1) SA 186 SCA at para 4

OFFENDING CONDUCT:

24. It is common cause and Mr Mahlaola admits that he did, on 31 July 2014, receive from the RAF payment in the amount of R4,626,066.00 and later a further amount of R167,887.15 on 8 January 2015. Save for 25% of the R4,626,066.00 the balance of the money was all due to the complainant.
25. It is also abundantly clear that Mr Mahlaola did misappropriate money due to the complainant and therefore trust money. This can be inferred from the following:
- 25.1 After receipt of the money, Mr Mahlaola failed to timeously inform the complainant, account to or pay to her what was due;
- 25.2 Even after complainant visited Mr Mahlaola's offices on more than one occasion demanding her money, Respondent was unable to pay her.
- 25.3 At the stage when the urgent application was launched by Masewawatla Attorneys, Mr Mahlaola did not have the money

to pay the complainant. He instead offered to settle and pay the money (trust money) in instalments;

25.4 Again after the Court order was issued, he was unable to make the first payment of R2,000,000.00 on the agreed date. Instead he asked for a further indulgence until the 10th April 2015.

25.5 His letter dated 1 April 2015 to the complainant's attorneys shows clearly that until that time, he did not have money to pay the complainant;

25.6 In her report to the Law Society, Ms Mapfumo specifically that Mr Mahlaola has misappropriated the complainant's money. She reports as follows:

"When I enquired why he had delayed paying the complainant he changed the story and informed me that he had utilised the money to pay disbursements pertaining to other matters which were being handled by the firm."

26. It is important to emphasise that an attorney has a duty and obligation to keep in his or her trust account, all trust moneys

until such time that a trust client gives instructions in relation thereto.

27. Referring specifically to trust moneys and the obligation of the attorney in that regard, the SCA per Ekseen JA held:

“When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that for which it is being held, and that it will be available to be paid to the person on whose behalf it is held whenever it is required.” (my underlining). *Vassen v Law Society of the Cape of Good Hope*²

28. In my view therefore, the Applicant has conclusively proved and established on a balance of probabilities that Mr Mahlaola has misappropriated trust moneys and therefore made himself guilty of dishonourable conduct.

²

1998 (4) SA 539 (SCA) at page 539 G - I

FIT AND PROPER PERSON:

29. With regard to the demands and conduct generally expected of members of the attorneys' profession Eksteen JA in **Vassen** *supra* expressed himself as follows:

"In this regard it must be borne in mind that the profession of an attorney, as of any other officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members; and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly. Here once again the respondent Society has been created to ensure that the reputation of this honourable profession is upheld by all its members so that all members of the public may continue to have every confidence and trust in the profession as a whole."

30. Taking into account the nature and seriousness of the misconduct, Mr Mahlaola has failed to uphold the high standard

which governs the attorneys' profession. He failed dismally to act in the best interest of his client. Instead he deliberately acted to her detriment or potential prejudice by misappropriating her money.

31. That being the case, I am satisfied and have no doubt that Mr Mahlaola is not a fit and proper person, to can continue to practise as an attorney of this court.

SANCTION:

32. On behalf of the Applicant it was argued that a proper sanction under the circumstances is that Mr Mahlaola's name be removed from the roll of attorneys.
33. On the other hand, on behalf of the Respondent it was submitted that a proper sanction will be a fine coupled with certain conditions. He argued that suspension and or removal of Mr Mahlaola's name from the roll of attorneys, will be too harsh a sanction under the circumstances.

DISCRETION OF THE COURT:

34. It is trite law that in deciding on or imposing an appropriate sanction, the court exercises a discretion. This discretion has to be exercised judicially taking into account various factors such as the nature and seriousness of the transgression, the interest of the clients and the profession in a general sense, the manner in which the transgression was committed. Over and above that, the Court must take into account the conduct and attitude of the attorney in dealing with and handling the conduct complained upon receipt of a complaint from the Law Society.
35. An illustration of this is to be found in the matter of *Law Society, Cape v Peter*³. In this matter, upon receipt of a complaint from the Law Society, the attorney co-operated fully. She admitted to the offending conduct and took all responsibility for her conduct. She made full and unconditional disclosure of all facts surrounding the conduct complained of to the Law Society. She showed remorse and apologised for her conduct. As a result of this, the SCA (per Farlam JA) came to the conclusion that notwithstanding her transgressions, she is not inherently a dishonest person.

36. Unfortunately, same cannot be said about Mr Mahlaola. What he did is exactly the opposite of what the attorney in the Peter matter (*supra*) did. The Law Society on 3 March 2015 addressed a letter to him, regarding the complaint. He was specifically requested to respond thereto before or on 30 March 2015. Respondent completely failed to respond to this correspondence.

37. In this regard, it is important to once again refer to what the SCA had to say about the role of the Law Society, and the importance of its relationship with member attorneys:

*"Here once again, the respondent Society has been created to ensure that the reputation of this honourable profession is upheld by all its members so that all members of the public may continue to have every confidence and trust in the profession as a whole."*⁴

38. The one factor that counts strongly in his favour, is that he did ultimately pay the complainant in full. This payment was however only made on or about 23 July 2015.

⁴ Vassen (*supra*) at page 538

39. What aggravates this case is the general conduct and attitude displayed by Mr Mahlaola throughout. He failed to take responsibility for his actions. He has shown no remorse whatsoever. Instead, he has always tried to downplay the seriousness of this matter.

40. Over and above that, what is more disturbing and of concern to the Court is the fact that Mr Mahlaola gave different and contradictory versions regarding the complainant's money:

40.1 Initially he told Ms Mapfumo that the money was throughout kept in his practice's trust account until paid to the complainant.

40.2 When interrogated further and shown that this was not true, he changed his version and admitted that he had utilised the money to pay for disbursements pertaining to other matters that his firm was handling.

40.3 In his answering affidavit the Respondent all of a sudden makes an about turn and alleges that the money was kept in an investment account. He does not provide any details of the said investment account or even the name or branch of

the banking institution involved. He goes at length and alleges that the bank failed to transfer the money into the complainant's account.

- 40.4 The version in his answering affidavit is contradicted by his letter of 1 April 2015 to the complainant's attorneys. The letter is very specific and reads in part:

"We are unable to make the necessary payment at this point. We humbly request an extension until 10 April 2015 as we are anticipating to receive funds in due course. We are really trying our level best to meet your demands and we are mindful of our obligations. Further we will never undermine your professional integrity. We are also mindful that this matter has the potential to destroy our profession."

(my underlining)

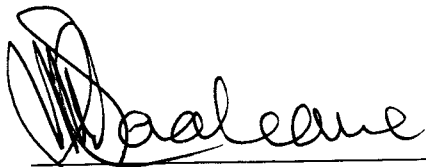
41. As I have pointed out, the letter is self explanatory and very specific. He did not have the money to pay and therefore was seeking further indulgence. He is also mentioning it specifically that he is hoping to receive funds in due course. There is no mention whatsoever in this letter of the investment and the fact

that the delay is due to the difficulty they are having with the bank.

42. It is therefore abundantly clear that the version and allegations made in his answering affidavit cannot be the truth. Once again, Mr Mahlaola failed to take this court into confidence.
43. It must also be borne in mind that after the Law Society obtained an interim order on the 8th December 2015, Mr Mahlaola filed an application for leave to appeal. This he did despite the fact that an interim order is not appealable. This is trite law.
44. Unfortunately Mr Mahlaola completely failed to take the Law Society into confidence by co-operating and disclosing frankly. His conduct as a whole makes a mockery of the attorneys' profession and the demands thereof. The contradictory versions he gave regarding complainant's money including those made under oath make it pertinently clear that he has little or no regard for the truth.
45. Taking into account all of the above, I am of the view that Mr Mahlaola has ceased to be a fit and proper person to practice as an attorney and should no longer be allowed to be part of the attorneys' profession.

ORDER:

I propose that Mr Mahlaola be struck from the roll of attorneys of this Court and that an order be granted in terms of the draft order attached hereto marked "X".



S S MAAKANE
Acting Judge of the High Court
of South Africa
Gauteng Division,
Pretoria

I agree and it is so ordered:



A BASSON
Judge of the High Court
of South Africa
Gauteng Division
Pretoria

APPEARANCES:

For the Applicant : Ms S L Magardie
Applicant's Attorneys : Damons Magardie Richardson Attorneys
Counsel for Defendant : Adv. R C Baloyi
Instructed by : Mpho Mofomme Attorney

X

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

Case No: 92249/2015

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

MICHAEL TSAKANE MAHLAOLA

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 **MICHAEL TSAKANE MAHLAOLA** (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