

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

2/9/2016

CASE NUMBER: 13901/2013

In the matter between:

THE PRETORIA SOCIETY OF ADVOCATES

APPLICANT

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
2 September 16	J. Heij
DATE	SIGNATURE

MARGARET VAN ZYL

RESPONDENT

JUDGMENT

TLHAPI J

INTRODUCTION

[1] The applicant is a Society of Advocates constituted in terms of section 7(2) of the Admission of Advocates Act 74 of 1964 and, this is an application for the removal of the respondent from the Roll of Advocates.

[2] The respondent is an admitted advocate. She practised first, from the High Court Chambers in Vermeulen Street ('Madiba Street') Pretoria and in August 2011 she moved to New Court Chambers in Paul Kruger Street. Her membership of the Pretoria Bar was terminated while she was at New Court Chambers. She relocated again and practised from 179 Blake Street, Riviera, Pretoria.

BACKGROUND

[3] This application relates to the respondent's conduct when she as junior member and Mr Michiel Daniel Du Preez ("Mr Du Preez"), a senior advocate of the Pretoria Bar were floor representatives tasked with the management of the Floor Fund ("the fund"). The fund was established by members on the 2nd Floor at High Court Chambers. A member who joined the floor fund was obliged to contribute R100.00 per month and the said amount was reflected by the Accounts Section of the Bar as an expense against the member's Bar account and his/her contribution was deposited thereafter into the ABSA floor fund savings account held at the Madiba street branch.

[4] It was from the proceeds of the fund that allowances were paid to the receptionist and tea lady. Other expenses related to floor functions which were arranged by the respondent in conjunction with Mr Du Preez and for the regular purchase of refreshments and other expenses on that floor. Special expenses had to be approved by the members. The daily withdrawal amount was limited to R1000.00. When larger amounts were required for payment, both representatives had to approve such payment which occurred by internal bank transfer or by means of a bank cheque. The respondent was also responsible for keeping the books and administration records of the fund. Although the bank card was usually kept in Mr Du Preez's office, the respondent ended up keeping the card because it was used on a regular basis.

[5] During 2010 members were asked to each make a once-off contribution of R300.00 towards the purchase of new kitchen equipment. Contributions were collected from 20 members between October and December 2010. The respondent explained to Mr Du Preez that it was impractical to purchase the equipment where the daily withdrawal on the floor fund account was limited to R1000.00. She suggested that the monies which she had collected in the sum of R6000.00 and which was in her possession be deposited into her personal credit card. She gave him assurance that her account was in credit and he agreed.

[6] At the beginning of 2011 Mr Du Preez made two requests to the respondent. The first was that she make the bank card available to him in order to pay a contractor he intended calling to repair the fridge door on the 2nd floor. The respondent explained that the bank card was at her home. On another occasion she explained that she had forgotten to bring the card along. After repeated requests and sms messages the respondent failed to make the card available. The second request was prompted by the fact that they needed to work through the books of the fund and to report back to the members. She undertook to do the report since the floor fund files and bank card were in her possession and at some point she had taken the files to her home. When enquiries were made regarding the kitchen equipment she explained that she had made enquiries at various dealers and was selecting the equipment to be purchased. Mr Du Preez discussed his concerns regarding the respondents conduct with Engelbrecht SC and Raath SC, both members of the floor fund and they advised that he keeps on pressuring the respondent to make the card and books available.

[7] When the respondent was due to relocate to New Court Chambers she informed Mr Du Preez that she had discussions with the lady members on the floor about taking over her position as floor representative and one Adv M Naude ("Ms Naude") was willing to take over from her. The need to conduct a handing over of the card and books of the fund and for her to compile her report on the handling of the floor fund was discussed. She was also advised to deposit the R6000.00 held in her credit card into the savings account. None of the

requests were complied with until she relocated to New Court Chambers on 1 August 2011. Mr Du Preez scheduled a meeting in his office on 22 August 2011 to discuss the floor fund and for handing over to Ms Naude. The respondent failed to attend but she asked for the meeting to be rescheduled to 25 August 2011, then later to 1 September 2011 and again to 8 September 2011. On the latter date the bank account was closed and the respondent's access to the account was blocked. The respondent was informed of this action and the bank statements obtained revealed that between 8 July 2011 and 11 August 2011 the respondent had withdrawn an amount of R4 850.00. The respondent requested that the meeting be rescheduled to 9 September 2011.

[8] The respondent attended the meeting of 9 September 2011 and Ms Naude and Engelbrecht SC were also present. The respondent failed to bring the card and floor fund files along. She could not give an account or give reasons for some of the withdrawals. She was again requested to deposit the R500.00 she had withdrawn to pay for the repair of the fridge door into the floor fund account, to deliver the files, and to transfer monies held in her credit card account into the floor fund account.

Another meeting was scheduled for 13 September 2011. Further statements were requested from the bank which showed that an amount of R1000.00 was withdrawn on 22 January 2011 and on 10 February 2011 bringing the total of monies withdrawn by her between 22 January and 11 August 2011 to R6850.00. It was evident from these statements that no deposit was made from her credit card into the account. The respondent did not hand over the floor fund files and bank card and she did not turn up for the meeting. A letter was addressed recording these events and another urgent meeting was requested. The respondent sent an email of same date that she had reduced everything into writing. She would pay the money from the credit card into the account and that she would send a messenger to deliver the files the following day, the 14 September 2011.

[9] On 15 September 2011 Mr Du Preez telephonically arranged a meeting with the respondent for the handover on 19 September 2011. He specifically requested that the files be availed before the meeting and she promised to do so via email. He, nevertheless decided the following day the 16 September 2011 to proceed to the respondent's chambers at New Court Chambers to collect the said files. He met the respondent in the lift lobby on her way to court, she indicated that she would soon return. After waiting for her for a while he returned to his office and sent an email recording the purpose of his visit. He reiterated her past conduct regarding the handover. He also confirmed that a meeting was scheduled for 19 September 2011. On the latter date the respondent sent 3 emails in which she recorded the misunderstanding about his visit to her chambers, confirming her attendance of the meeting later that day at 13H00. A second email at 12h45 indicated that she was still in court and at 13h00. She indicated that she would rather explain everything in writing and that he could call if he needed any explanation. Mr Du Preez in an email of the same day demanded delivery of the files, the card and her written explanation no later than 12H00 the following day, the 20 September 2011, failing which her conduct would be reported to the members of the floor fund.

[10] The files were received but not at the stipulated time and the respondent had failed to account as was requested. Mr Du Preez averred that he worked through the files and, relying on her notes he reported back to her, to the effect that expenses amounting to R2 110.21 were justified but that there was a shortfall of R4 739.79; for the kitchen equipment R6 405.00 was collected but there was a note reflecting that R6105.00 had been deposited into a blue bean account. A cheque for R300.00 was not deposited, it had expired. There was no proof that she had paid the kitchen equipment contributions into the floor fund account. There was therefore an amount of R11 144.79 not accounted for. The respondent was given another opportunity to explain the shortfall on or before 26 September 2011, that is, before her conduct could be reported to the members. When nothing was heard from her she was advised that a meeting of members had been scheduled for the 3

October 2011 and, she was invited to the meeting. The respondent sent an email on 29 September 2011 reporting that she had been ill for two weeks and had not read her mail. She did not dispute the calculations presented to her and she offered to pay back any shortfall. She also wanted to know what interest was payable on the amount. She advised that she had experienced problems with her bank's FICA requirement and was certain that she would be collecting her bank card that weekend.

[11] The meeting with the members of the floor fund convened on 3 October 2011 recommended that before the conduct of the respondent was reported to the Bar Council an *ad hoc* committee consisting of Engelbrecht SC, Raath SC and Bosman SC and all members convene a meeting with the respondent to give her an opportunity to resolve the matter. On the same day the respondent sent an email advising that she had deposited an amount of R4 814.00 and explained that R500.00 was in respect of the fridge door repair and R4 240.00 was used to buy kitchen equipment because she did not have access to her blue bean account and requested time to enable her to transfer money from her blue bean account into the floor fund account.

[12] On 5 October 2011 at a meeting with Engelbrecht SC, Raath SC and Bosman SC the respondent undertook to provide the bank statements, the card in respect of which she had FICA problems, the invoices and receipts of the kitchen equipment purchased. She failed to attend the meeting convened on 7 October 2011 for the handover. Raath SC made a follow up by sending sms messages on 14, 17 and 18 October 2011 and to these she gave excuses and undertook to contact him. Raath SC sent a message on 25 October 2011 that no purpose would be served by making further contact with her, because she had been given reasonable opportunity to hand over the statements and bank card. She made a further undertaking on 27 October 2011.

[13] When nothing further was heard from her Mr Du Preez prepared a memorandum for consideration to the Bar Council which in turn referred a complaint to the Professional and Ethics Committee. The committee referred the matter back and closed its file because the respondent had failed to pay her Bar accounts. The complaint was later resubmitted by Advocate Botes to the Bar Council because of the view that the respondent's conduct lacked the honesty expected of an advocate and, that this was *prima facie* indication that she was not a fit and proper person to practice as an advocate. On 7 February 2012 the Bar Council resolved to instruct the Professional and Ethics Committee to launch an application for the removal of the respondent from the roll of advocates.

[14] The respondent averred that she served as floor representative from 2007 to 2011. Not all members of the floor contributed towards the floor fund. When the funds were not sufficient to cover their needs she would consult with Mr Du Preez and a letter would be circulated for more contributions. It was decided not to increase the contributions lest the paying members stopped paying. All purchases were discussed with Mr Du Preez and when she had not done so she would report back to him and the receipts would be placed on the file. Sometimes when funds were insufficient she would use her money, for example, for the purchase of colour cartridges and birthday cards. She would refund herself when sufficient funds had accumulated between R500.00 and R1000.00. Furthermore she realized that transaction fees charged for small withdrawals was high and that when using the card for purchases both she and Mr Du Preez had to sign when using the card. It was agreed that that a larger amount be withdrawn as opposed to the weekly small cash withdrawals. The card and cash were then kept by her and she would do a reconciliation from time to time. Contrary to this Mr Du Preez averred that a R1000.00 limit per day was placed on the card and that it was only in respect of purchases exceeding R1000.00 where he had to authorise a bank cheque or transfer of funds. The respondent averred that she initially had her own file and it was only in 2010 when Mr Du Preez handed over the floor fund file which was in disarray. It contained receipts and written notes and banking information. She undertook to

organize the file for which he thanked her.

[15] It was realized from 2008 that the kitchen equipment needed to be replaced. She used her money to purchase a microwave oven and later refunded herself. It was only during 2010 when it was decided to ask for additional contributions from the members. She obtained quotations and they decided on a budget of R6000.00 which was approved by the floor members. She admitted having personally collected the R300.00 contributions from 20 members and that she failed to deposit Mr Blignaut's R300.00 cheque which expired. Due to incidents of theft at the chambers she decided to keep the bank card and floor fund files at her home. She further admitted to having made withdrawals amounting to R4850 between July and August 2011 as reflected in Annexure B to the founding affidavit. She withdrew the money to pay for the kitchen equipment she had ordered because she had problems with her blue bean account. In order to facilitate purchases the contributions of R300.00 were deposited into her blue bean credit card which had a credit balance and this was approved by Mr Du Preez.

[16] The respondent gave the following explanations to the complaints against her:

Repair of the fridge door: She withdrew R500.00 from the floor fund to pay the handyman. She had planned to either give it to Mr Du Preez or to pay the handyman as and when she was requested to do so. She later noticed that the door was fixed and when no one asked for the money she re-deposited it into the floor fund account. According to Mr Du Preez the fridge door was never repaired before 2012 and subsequently a new fridge was purchased. He further denied that this specific amount was determined by him, except that he suggested that if the repairs were done in house it could cost less than R1000.00. He only became aware of her reason for the withdrawal at the meeting of 9 September 2011. He requested that she pay the money back into the floor fund account and this amount was not paid back before October 2011.

Floor fund files and report: She denied that she was contacted early 2011 by Mr Du Preez to work through the files. What happened was that since she was moving to New Court Chambers a replacement had to be appointed. Ms Naude was then identified and she informed Ms Naude that they needed to go through the files and to discuss the procedures. She then asked her mother to assist with the filing. At about the same time she suffered ill health and was hospitalized. She prepared a report which was not in bookkeeping format.

Floor fund bank and blue bean cards: She had not used the blue bean account since depositing monies for the kitchen equipment into it. The last debit on the account was on 29 September 2008. She informed Mr Du Preez that she was arranging to close the account in order to transfer the monies to the floor fund account. She realized that the blue bean account had been blocked and she was informed by the bank that it was due to FICA registration requirements. After she delivered the requirements she was assured that the new card would be available in a few weeks time. The problems with the blue bean card persisted after her divorce. During April 2013 she was informed that the balance on the card was R8 203.90 and that the calculation of interest earned on the amount could only be traced back for a period of six months. After the account was closed she tendered payment of the said amount plus R1000.00 as interest which amount was to be deposited into her attorney's trust account in order that it be transferred to the fund. She did not receive regular bank statements and she could only produce those she could find after searching through her storage boxes being VZ1 and VZ2. Later VZS1 being a letter advising of the closure of the blue bean account and VZS2 which showed that there were funds available in the blue bean account was sent.

According to Mr Du Preez the blue bean statement VZ1 reflected a credit balance of R506.40 for period 10 November to 10 December 2009, and that this was not for the period October to December 2010 when the deposits of the members were allegedly paid into the

blue bean account. He further mentioned that without the full series of statements from the blue bean account it was difficult to determine when the respondent made deposits into the account and when the single amount of R6105.00 was paid into such account. Only an amount of R4 739.79 was paid into the floor fund savings account on 3 October 2011. The tender to pay in the outstanding amount of R7 105.00 was only made after the application was launched.

Meetings to discuss files and bank cards: On 22 August 2011 she was held up in motion court. She rescheduled for 25 August and on this day her mother fell ill. On 1 and 8 September 2011 she had not been consulted on her availability. She was again held up in court and she informed Mr Du Preez. On 9 September 2011 she was under the impression that the meeting was between her, Mr Du Preez and Ms Naude, she was not expecting Engelbrecht SC to be present. She had intended at this meeting to inform Mr Du Preez that she would deliver the kitchen equipment she purchased over the weekend. She was upset because the meeting turned into an interrogation. She had not brought the floor fund file along. The R500.00 withdrawal was for the fridge door repairs and two more withdrawals of R1000.00 each were for purchase of the kitchen equipment. She was not in a position to account for the other withdrawals she had made from the floor fund account as reflected in annexure B. On 13 September 2011 she was still upset by what occurred at the previous meeting and did not attend this meeting. She failed to attend the meeting on 19 September 2011. She confirmed having met with Bosman SC, Engelbrecht SC, and Raath SC on 5 October 2011. At this meeting she undertook to provide statements of the blue bean account. On 7 October 2011 she met with Ms Naude at Bosman SC's office and handed over receipts for additional costs which she had personally incurred but had not recovered from the floor fund. These amounts were not taken into account in Mr Du Preez calculations.

Her personal circumstances: Mr Du Preez and her colleagues were aware that during that time she was under tremendous pressure and that she could not cope. She suffered ill

health and depression and there had also endured three attempts of a car hi-jacking. She was married to one of her colleagues and she had problems in the marriage concerning her husband's addiction to prescription medication and alcohol. He was unable to give her emotional support or to provide financially for the family. She became the main breadwinner and on the other hand she was also financially responsible for her mother. She got divorced and had to relocate from her home. These circumstances put a strain on her practice and mental state and as a result she could not afford the financial responsibilities of her practice. Her mother also suffered ill health. She had transport problems due to accidents she and her mother had been involved in and this affected her work during the time when the vehicle was being repaired. During 2012 she got engaged and fell pregnant. Her fiancée had no interest in the pregnancy. The engagement was broken off and she did not disclose this to her mother who had moved to Graaf Reinette.

[17] At the hearing of the matter during March 2014 and by agreement between the parties the respondent filed a supplementary affidavit to deal with the additional information requested by the applicant; the steps she had taken to obtain the blue bean bank statements and to address the queries raised by the applicant's attorneys relating to the statements. She annexed letters to the bank and one from the applicant's attorneys dated 17 March 2014 which read:

“ Sonder om afbreuk te doen aan die plig van u klient om in die geheel die hantering van die fondse met verwysing na die Blue Bean kredietkaart te verduidelik by wyse van 'n aanvullende verklaring, word u klient versoek om spesifiek ook met verwysing na die staat van 11 April 2013 drie krediet inskrywings te verduidelik . Teenoor 2 April 2013 is daar twee krediet inskrywings onderskeidelik van R1000.00 en R3000.00 en beskryf as “Fund Transfers”. Teenoor 11 April 2013 is daar een inskrywing van R3000.00 ook beskryf as ‘Fund Transfers’. Op die staat van Mei 2013

word teenoor 'payments and credits' 'n bedrag aangedui van 8 215.64"

Dit word verlang dat u klient verduidelik wat die oorsprong is van die krediete en spesifiek aandui uit watter rekening die bedrae inbetaal is in the Blue Bean rekening.

U klient word ook versoek om op die staat van 10 Mei 2013 "Purchases and Debits" van R16 407.80 te verduidelik.

Verder word u klient versoek om bewys te lewer van die rekening en oorsprong van die bedrag van R7 105.00 in u trustrekening soos uiteengesit in ons skrywe gedateer 11 Maart 2014."

The supplementary affidavit dealt with an admission by the respondent that she had misled the court in alleging that the R6105.00 had been deposited into the blue bean account. She also gave reasons why she had also manipulated the entries VZS2 by using her personal computer. The respondent proceeded to explain the problems she had encountered in trying to obtain copies of her blue bean account statements, that is after the queries were raised by the applicant's attorneys. Furthermore she amplified on her personal circumstances which contributed towards her failure to deal with her conduct regarding the floor fund account.

THE ISSUES

[18] The issue is to determine whether the respondent is a fit and proper person to practice as an advocate with focus on her management of the floor fund account and her conduct when she was called upon to account by Mr Du Preez representing members of the floor fund. Furthermore, whether she should be struck from the roll of advocates

ANALYSIS OF EVIDENCE

FLOOR FUND ACCOUNT HELD WITH ABSA

[19] Each member of the approximately thirty members of the floor fund were expected to contribute R100.00 per month towards the floor fund. A contribution of about R3000.00 was therefore expected on a monthly basis and if a lesser amount was deposited it would mean that some member failed to pay his or her contribution towards the bar account. The members contributions were transferred from their individual bar accounts to the floor fund account held with Absa Bank. Only one bank statement, annexure B, for the months 8 June 2011 to 8 September 2011 was annexed. The following deposits were reflected on this statement, R2800.00 on 24 June 2011; R2800.00 on 23 July 2011 and R2700.00 on 24 July 2011.

[20] The R6105.00 collected separately from the R300.00 contributions was never deposited into the floor fund account and the single cheque payment expired because it was not deposited. It was not explained by Mr Du Preez what the status of the account was for the months preceding June 2011 except that withdrawals of R1000.00 each and amounting to R2000.00, were made in January and February 2011. Although no vouchers were availed the respondent explained that she purchased trays and jugs for this amount. It is from these withdrawals of R2000.00 in the bank statements preceding June 2011 and R4850.00 in annexure B that Mr Du Preez determined justified the expenditure of R2 110.21, which left a shortfall of R4739.79. The respondent averred that from the latter amount she purchased kitchen equipment after her blue bean account had been blocked. She averred that she returned these items to the suppliers after the meeting of 9 September 2011 and after she was subjected to an interrogation and was allegedly embarrassed in the presence of Ms Naude and Engelbrecht SC. No vouchers were provided for the returns. On 3 October 2011 she repaid the money and deposited R4814.00 into the floor fund account as refund of

such shortfall.

THE BLUE BEAN ACCOUNT

[21] After the refund of the shortfall into the floor fund account the respondent continued to maintain that the R6105.00 collected from the members was in her blue bean account and that she could not secure the release of the monies due to the bank's FICA requirements.

The supplementary affidavit reveals the following:

1. That the allegations of her FICA problems were false and having regard to the time it took to obtain her bank statements during March of 2014, it was evident that they could easily have been obtained if she had diligently pursued a request for the statements with the bank during 2011;
2. She failed to obtain a full complement of the statements because she had something to hide, the R6105.00 was never deposited into the blue bean account and instead by using her personal computer she admitted that she manipulated the entries in her blue bean bank statements annexed to the answering affidavit in order to reflect that her account was in credit;
3. The blue bean account it transpires could not have been in credit as alleged by the respondent when she allegedly gave assurances of such fact to Mr Du Preez, and when she alleged that the only reason for her failing to make the R6105.00 available was because of the FICA requirements set by the bank. Different amounts were transferred from her practice account to the blue bean account

only after the launch of this application on 5 March 2013 being an amount of R4000.00 on 2 April 2013 and an amount of R3000.00 on 11 April 2013;

4. When the blue bean account was closed during 2014 an amount of R8203.90 was transferred to the respondent's practice account and then to her attorneys trust account and a sum of R7105.00 was paid over to the applicant.

THE LAW

[22] An application for the striking of a practitioner from the roll of advocates on account of misconduct, is not an ordinary civil proceeding but a disciplinary proceeding as stated in **Society of Advocates of South Africa (Wits Division) v Edeling** 1998(2) SA 852 (W) at 859 I-J and 860 A

"It is a sui generis statutory process of a disciplinary nature.....Solomon v Law Society of the Cape of Good Hope 1934 A D 401 at 408....."

"The proceedings.....are no more than a request to the Court by the custos morum of the profession to use its disciplinary powers over an officer of the Court who has misconducted himself."

At 860 B-C

"Proceedings of this nature are those of the Court and not of the parties. It was the Court in the first instance who admitted a person as an advocate when it was satisfied that such person was a fit and proper person to be allowed to practice as an advocate. The Court exercises its inherent right to control and discipline the practitioners who practice within the jurisdiction in applications of this nature"

[23] The conduct under scrutiny relates strictly to the respondent's conduct as floor representative of the floor fund who together with Mr Du Preez managed the fund; they were

custodians of the books/files of the fund and signatories to the floor fund bank account held with Absa Bank. The function of the applicant as the *custos morum* of the profession is that of watchdog. Its functions may extend beyond the confines of the courts and responsibility and relationship a practitioner and member has with the court and client. Such functions are not limited only to issues pertaining to the career of the practitioner and, what was stated in **Society of Advocates, Natal v Z** 1988(3) 443 at 446 B-D is apposite:

"We can, however, have regard to extra-professional activities as shedding light on the character and integrity of the respondent. In deciding whether or not any particular action is morally reprehensible one must, I consider, bear in mind that, as regards actions which take place in the particular context of a business community, the standards of that community must colour the conduct and may in certain circumstances explain conduct but not excuse it against the background that the conduct is that of an officer of the Court"

[24] It is trite that it must be determined first whether the offending conduct has been established on a preponderance of probability. The next step is to establish whether the respondent was a fit and proper person to practice as an advocate. Although this exercise to some degree involves a value judgement the exercise of the court's discretion does not play a role. It is only after it has been objectively established from the facts that the respondent is not a fit and proper person that the court exercises its discretion to suspend or strike from the roll, **General Council of the Bar of South Africa v Matthys** 2002 (5) SA 1(E) at paragraph 5; **General Council of the Bar of South Africa v Geach and Others** 2013 (2) SA 52 (SCA); **Kekana v The Society of Advocates of SA**, 1998(4)SA 649 (SCA).

[25] It is my view that the respondent's conduct should be examined from the time that she decided to move to New Court Chambers and her realisation that she had to hand over to someone or Ms Naude. Common sense demanded that she should have during March or

April 2011 when she was considering moving, commenced with her report on the floor fund account before her move in August 2011. While it was submitted on her behalf that the complaints levelled against her had nothing to do with the rules of the applicant or loyalty towards a client or her conduct before the court, she was in control of monies which did not belong to her; she was placed in a position of trust; she had an obligation to account as best she could and not necessarily in bookkeeping format. Mr Du Preez did not qualify what he determined were justified expenses in that it was not clear to me what they related to, especially because on his version and that of the respondent there were certain standing expenses. For example, the allowances to the secretary and tea lady and the expenses for refreshments for the members and other purchases which she used to pay for and later claim a refund.

[26] On the other hand the respondent failed to produce any voucher relating to her purchase of the jugs and trays she alleged to be already in use and the crockery and cutlery which she alleged to have returned to the supplier. In my view it was improbable that goods could be returned to the store without any document to show that such goods originated from the stock of such store and it is further improbable that the store in question would fail to furnish any document to prove that a customer had been refunded for the returns. I further fail to understand why the respondent deemed it proper to return the items which had been expected over many months by the floor members just because she had been interrogated and embarrassed by Mr Du Preez. On the other hand Mr Du Preez despite not having seen the jugs and trays did not establish whether or not they were there and in use. As I see it and except for the trays and jugs it was probable that the cutlery and crockery were never purchased by the respondent. The respondent paid back the shortfall by making a deposit into the floor fund account on 3 October 2011, being an amount of R4814.00 (4739.79 plus R74.21 bank costs) and such deposit was confirmed by Mr Du Preez.

[27] As officers of the Court practitioners are held to a very high standard of ethical values

and any conduct inconsistent with such values is reprehensible. Where an advocate gives false information whether under oath or otherwise, this constitutes material facts from which the Court must determine whether he or she is a fit and proper person, Kekana *supra*. The explanations of the respondent to her colleagues and in her answering affidavit and as admitted in her supplementary affidavit amounted to false statements. Some of the statements were made under oath where she not only misled her colleagues over a period of time but where she also misled the court. Furthermore, she manipulated the figures on her bank statements with her personal computer thereby misrepresenting the true status of her blue bean credit card account. In as far as her affidavits were concerned her conduct could amount to perjury and I find that her conduct was reprehensible. In Kekana *supra* at 655 H, Hefer JA stated:

“ I also support Heher J’s observation in the present case that :

“the word of an advocate is his bond to his client, the court and justice itself. In our system of practice the courts both high and low, depend on the ipse dixit of counsel on every turn.”

“This is why there is a serious objection to allowing an advocate to continue practising once he has revealed himself as a person who is prepared to lie under oath. Legal practitioners occupy a unique position. On the one hand they serve the interests of their clients, which require a case to be presented fearlessly and vigorously. On the other hand, as officers of the court they serve the interests of justice itself by acting as a bulwark against admission of fabricated evidence. Both parties have strict ethical rules aimed at preventing their members from becoming parties to the deception of the Court.....The preservation of standard of professional ethics having been left almost entirely in the hands of individual practitioners, it stands to reason, firstly that absolute personal integrity and scrupulous honesty are demanded.....a practitioner who lacks these qualities cannot be expected to play his part.” (my underlining)

In **Geach and Others** *supra*:

“It was said in Malan that “if a court finds dishonesty the circumstances must be exceptional before a court will order a suspension instead of removal”. That does not purport to lay down a rule of law but expresses what follows naturally from a finding of dishonesty. Once an advocate has exhibited dishonesty it might be inferred that the dishonesty will recur and for that reason he or she should ordinarily be barred from practice.

[28] In considering appropriate sanction it was submitted for the applicant that the respondent's deception, in particular with regard to her blue bean account, over a long period of time should be viewed in serious light. Furthermore that such conduct was indicative of a character defect, which could not be equated to a moral lapse because of her personal circumstances. It was submitted that she should be struck off the roll and that only after a long period has lapsed, where she has demonstrated that she has completely reformed and rehabilitated could a court consider permitting her to practice again as an advocate.

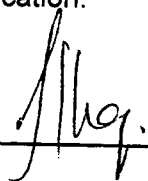
It was submitted for the respondent that her personal circumstances contributed to her conduct and that these were unlikely to recur and would not be a consideration in the future. Without listing them, during 2010 marital problems resulted in financial difficulties where she became the sole breadwinner, she suffered emotional distress and depression; she was hospitalized at some point. These problems endured till about 2012. She was a first offender and had shown remorse. She repaid the monies.

[29] I have already found that her conduct was reprehensible especially that of lying under oath and of manipulating her bank statements. Unlike what occurred in **Kekana** *supra*,

she did not persist with such version up to the end. Her blue bean bank statements were finally released for scrutiny although at the instance of the queries raised by the applicant's attorneys. Although the misconduct related to her mismanagement of the floor fund account and that she had repaid them, one cannot ignore the fact that she had been placed in a position of trust and that she had failed to take the opportunities she was given to set the record straight. I am of the view that the court has to show its disapproval of such conduct in the strongest of terms. I am however not of the view that the appropriate sanction in these circumstances was that of having the respondent struck off the roll. In consideration of an appropriate sanction I must say that her admission to wrong doing showed remorse. She repaid the money and furthermore she was a first offender. Due to problems in her personal life she went through a period of depression and ill health. As I see it a suspension from practice of the respondent will suffice.

[30] In the result I make the following order:

1. The Respondent is suspended from practice for a period of eighteen (18) months from the date of this order;
2. The Respondent is ordered to pay the costs of this application.



TLHAPI VV
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree



MAUMELA TA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA