



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

CASE NO: 31869/2020

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.

DATE 03 May 2021

SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

PETER MARTINUS BREEDT

First Respondent

PETER M BREEDT INCORPORATED

Second Respondent

J U D G M E N T

This application was heard virtually and otherwise disposed of in the terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1] Introduction

This is the judgment in an application by the South African Legal Practice Council (LPC) for an order that the name of the first respondent, Peter Martinus Breedt be struck from the roll of legal practitioners. The second respondent is Mr Breedt's incorporated law firm, Peter M Breedt Inc.

[2] The role of the LPC

The role of the LPC is that of custodian of legal practitioners and overseer of their conduct. It does so in terms of the Legal Practice Act, 28 of 2014 (the LPA). The LPC is the successor of the Law Society of South Africa and its provincial societies. The custodian role and the LPC's function as amicus to the court has been set out in various judgments and it is not necessary to expand thereon for present purposes. See, inter alia Prokureursorde van Transvaal v Kleynhans 1995 (1) SA 839 (T) and Law Society of the Northern Provinces v Le Roux 202 (4) SA 500 (GNP). The current application is one in terms of section 44(1) of the LPA which affirms the power of this court to "*adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner*". It must be read with section 31(1)(a) of the LPA which obliges the LPC "*to cancel the enrolment of a legal practitioner if the High Court orders that his or her name be struck off the Roll*".

[3] The suspension order

On 18 August 2020, the LPC applied to this court for an order that the first respondent be suspended from practice and that a *curator bonis* be appointed to take control of his practice. The respondents gave notice to

abide such an order, which was granted on the said date by Raulinga, J together with certain ancillary relief.

[4] The inquiry

The determination of whether a practitioner is no longer fit and proper to practice as such and the exercise of the discretion regarding an appropriate sanction, involve a three-stage inquiry:

- The first inquiry is to determine whether the alleged offending conduct has been established on a preponderance of probabilities.
- The second determination is as to whether the practitioner is still fit and proper to continue to practice in view of those offences which have been determined in the first inquiry.
- The third inquiry is, whether in all the circumstances of a particular case, the sanction of striking off is the appropriate sanction or whether any other sanction should be imposed.

See: Jasat v Natal Law Society 2000 (3) SA 44 (SCA) and Malan v Law Society of the Northern Provinces 2009 (1) SA 216 (SCA).

[5] The offending conduct

- 5.1 In the affidavit filed on behalf of the LPC in support of the initial application for the suspension of the first respondent from practice, the following offences were identified (in similar fashion as in Malan (above) at [21], I shall merely list the offences as they are not really in dispute): a trust deficit of some R20 million was identified, the first respondent had practiced as an attorney without a Fidelity Fund Certificate for some time, the auditor's report for the period ending 28 February 2019 was flawed and

could not be relied on, irregular transfers from the firm's trust banking accounts were made, the first respondent had effectively abdicated his control over the firm's trust account and generally failed to account to the firm's clients in respect of trust funds or delayed payment of trust funds to clients. A number of the provisions of the Code of Conduct for legal practitioners were also breached.

- 5.2 Shortly before the aforementioned suspension order, the respondents delivered an affidavit styled an "explanatory affidavit". In it, the first respondent stated: *"I furthermore confirm that I am aware of the trust shortage and do not contest the correctness thereof, nor the charges as laid against myself and the second respondent by the various complainants as attached to the founding affidavit"*. The trust shortage was, without the furnishing of any particularity, ascribed to the conduct of an employee against whom the first respondent had laid criminal charges.
- 5.3 Prior to the hearing of the application for striking off, the LPC caused a further supplementary affidavit to be filed. This was done in order to inform the court of several additional complaints received against the respondents. The first is that of a Mr Lesetedi who was not paid the proceeds of a sale of immovable property after the respondents had attended to the transfer thereof. The second was from a Ms Ntlabathi. She was the purchaser of a property and had paid R 550 000.00 in total to the respondents. These funds are unaccounted for and neither did the transfer go through. The third complaint was from a Mr Matlala. His complaint related to transfer fees which he had paid in respect of a property transaction which had been cancelled and which had not been repaid to him. The fourth complaint was from a Mr Mngomezulu. This concerned the uncompleted administration of a deceased estate. A fifth complaint was

lodged by a Ms Thito. She had not received the portion of her rates and taxed to which she was entitled to after the sale of her property, which refund had been paid to the respondents. A seventh complaint, of Mr and Mrs Makhajane also related to a property transaction. After payment of the purchase price, the sale never went through but the funds were no longer available in the respondents' trust account. The eighth complaint, of a Ms Rapadi, is for a loss in similar terms, but only for the deposit and transfer fees and not the whole purchase price as in the case of the previous complaint.

- 5.4 Not only did these complaints result in a number of further contraventions of the Code of Conduct for legal practitioners and various provisions of the LPA, it also increased the exposure and liability of the Fidelity Fund and resulted in further prejudice to members of the public.
- 5.5 The respondents have neither answered nor delivered an "explanatory affidavit" in respect of these complaints (as they have previously done).
- 5.6 The determination is consequently that the offending conduct have been established on a balance of probabilities.

[6] Fit and proper

In the latest affidavit delivered on behalf of the LPC, its chairperson submitted, in view of the above facts, that the first respondent has made himself guilty of unprofessional, dishonourable and unworthy conduct and that he cannot be considered to be a fit and proper person to remain on the roll of attorneys. I agree. This submission is substantiated by the aforementioned facts.

[7] Sanction

In exercising the value judgment required for the imposition of an appropriate sanction, I take into account that the transgressions are numerous, they extend over a period of time, they impacted negatively on various parties, be they purchasers or sellers of properties, bondholders or beneficiaries of a deceased estate. The transgressions are all related to moneys and, in particular, trust funds. The trust placed in the first respondent as a legal practitioner has repeatedly been breached. The breaches involve greed and dishonesty, and, if they were not perpetrated by the first respondent but by a member of his staff, then he has displayed a reckless disregard or gross dereliction of duty in respect of monies which the public had entrusted to him. In those circumstances and where no mitigating factors have been placed before us, I am of the view that a striking off order would be the most appropriate sanction.


[8] Control and costs

- 8.1 The suspension order makes provision for the control over the files of the respondents by placing it in the hands of a curator. The provisions relating to the curator's powers should remain in place for the proper administration of those files in the interest of the public.
- 8.2 The provisions under which the LPC operate in matters such as this and precedent provide that costs, which should in this case follow the event, be ordered on the scale as between attorney and client.

[9] Order


The order should be as follows:

1. The name Peter Martinus Breedt is struck off the roll of legal practitioners and the applicant is ordered to adjust its records accordingly.
2. Paragraphs 3 to 13.5 of the order of 18 August 2020 remain in force.
3. The respondents are, jointly and severally, ordered to pay the costs of the application on the scale as between attorney and client.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree



K S MAHLANGU
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 20 April 2021

Judgment delivered: 03 May 2021

APPEARANCES:

For the Applicant:	Mr L Groome
Attorney for the Applicant:	Rooth and Wessels Attorneys, Pretoria
For the Respondents:	No appearance
Attorney for the Respondents:	Hefferman Attorneys, Pretoria