IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 26408/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: YES

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL **APPLICANT**

and

RADHIKA SINGH (RAMDIN) **RESPONDENT**

(ID NUMBER [….])

REASONS FOR THE SUSPENSION ORDER DATED 22 JUNE 2021

BASSON J

[1] This matter came before this court on an urgent basis to have the respondent suspended from the roll of attorneys (Part A), alternatively struck from the roll (Part B). The court, after having heard the parties granted the relief sought in Part A of the Notice of Motion pending the outcome of Part B.

No opposing papers

[2] Although the respondent filed a Notice of Intention to oppose, no opposing papers was filed opposing the application. On the day of the hearing the respondent filed an application for a postponement which was considered but refused. In this affidavit the applicant deals superficially with some of the allegations against her (which she denies). She also apologises for not having met with Mr Swart who was tasked by the Legal Practice Council to investigate her firm but blames it on the fact that she had COVID. This may be so, but does not explain why the respondent could not make contact with the applicant via email or telephonically over many months. The respondent also takes issue with the fact that no disciplinary hearing has been convened against her. I will deal with this issue briefly later in the judgment.

The urgent application

[3] The Legal Practice Council (*"the applicant"* or *"the Council"*) approached the court for relief on the basis that a substantial amount of money is missing from the respondent's trust account, which she fails to give any explanation for. The applicant also explains to the court that the respondent fails to correspond with the applicant regarding the status of her firm despite numerous attempts by the applicant. (I have in paragraph [2] referred to the respondent's explanation in this regard.) However, apart from the allegation of missing trust funds, the respondent had ignored or breached a *legio* of the Rules, Regulations, Codes of Conduct and Statutes that regulate the legal profession.

[4] As a result of the aforegoing and on 12 April 2021, the applicant took a resolution to suspend the respondent from practicing as a legal practitioner. The application was served on the respondent by email on 9 June 2021. The sheriff's return of service dated 31 May 2021 indicates that the premises where the respondent practiced is locked and not occupied. The respondent was afforded until 8 June 2021 to file an intention to oppose the application. The applicant also

invited the respondent to Caselines. The *dies* for the intention to oppose expired. No opposing papers were received apart from an application to postpone the matter.

[5] After the applicant had received several complaints to the effect that the respondent is in contravention of the Legal Practice Act (*"the LPA"*),[1] the Code of Conduct, the Council's Rules and the Rules for the Attorneys' Profession in that she is accused of unprofessional, dishonourable and unworthy conduct, the applicant instructed a chartered accountant and auditor in the Risk and Compliance Department, Mr Swart (*"Swart"*), to visit Singh (Ramdin) Attorneys to conduct an inspection of the respondent's accounting records and practice affairs and to investigate the complaints. The papers show that Swart, although mandated to investigate the respondent's firm, was unable to do so due to the obstructive behaviour of the respondent. For example, Swart attempted to contact the firm by telephone on 10 January 2020. The telephone call was unanswered. On 14 January 2020, 16 January 2020, 4 February 2020 and 25 February 2020 Swart again attempted to contact the firm by telephone and again the telephone call was not answered. On 26 February 2020 Swart visited the offices of the firm without an appointment at the address of the firm but was informed by the security guard that the applicant has left for work. Swart thereafter attempted on numerous occasions to establish contact with the respondent but to no avail. She did not answer his calls nor returned his emails. The respondent also did not reply to Swart's email dated 16 March 2020. In September 2020 Swart sent an SMS to the respondent but she failed to respond. Eventually the applicant appointed a tracing agency to find the respondent and even that was unsuccessful. Why the respondent could not inform the applicant of her whereabouts is not properly addressed in her affidavit in support of a postponement. As a result of the respondent's obstructive behaviour, Swart was unable to inspect her firm's accounting records. All of this could have been avoided if the respondent had complied with her duties as a legal practitioner.

[6] The aforesaid conduct of the respondent is in contravention of:

(i) Clause 16.1 of the Code of Conduct, which states that an attorney

---

[1] Act 28 of 2014.

shall within a reasonable time reply to all communications which require an answer unless there is good cause for refusing an answer.

(ii) Clause 16.2 of the Code of Conduct in that she failed to respond timeously and fully to requests from the Council for information and/or documentation she is able to provide.

(iii) Clause 16.3 of the Code of Conduct in that she failed to comply timeously with directions from the Council.

(iv) Clause 16.4 of the Code of Conduct in that she failed to refrain from doing anything that may hamper the ability of the Council to carry out its functions.

(v) Section 87(2)(a) of the LPA which states that the Council or the Board may itself or through its nominees, at the cost of the Council or the Board inspect the accounting records of any trust account practice in order to satisfy itself that the provisions of section 86 and subsection (1) are being complied with; and, if on an inspection it is found that these provisions have not been complied with, the Council or the Board may write up the accounting records of the trust account practice and recover the costs of the inspection and the writing up of the accounting records from the trust account practice concerned.

[7] The complete lack of compliance by the respondent with the requirements of communication with the Council, amounts to unprofessional, dishonourable and unworthy conduct by the respondent and displays a complete disregard for her controlling body.

Accounting records

[8] According to the records of the applicant, the Attorney's Annual Statement on Trust Accounts and Independent Auditor's Reasonable Assurance Report on Attorney's Trust Accounts (the *"accountant's report"*) was not received by the Council from the respondent for the year ending 29 February 2020. This is in

contravention of Rule 54.20 of the Council's Rules, which state that a firm shall at its expense once in each calendar year or at such other times as the Council may require, appoint an auditor to discharge the duties assigned to the auditor in terms of these rules.

Fidelity Fund Certificate

[9] Further, according to the applicant's records, the last Fidelity Fund Certificate issued to the respondent is for the year ending 31 December 2019. The respondent has therefore been practising without a Fidelity Fund Certificate since 1 January 2020. This is in contravention of sections 84(1) and (2) of the LPA which provide that every attorney who practises or is deemed to practise for his or her own account either alone or in partnership or as a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund Certificate, and that no legal practitioner or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund Certificate.

Complaints against the respondent

[10] Various complaints were lodged against the respondent. I do not intend delving into them in detail. Suffice to point out that the court is concerned about the allegations of perceived mismanagement of trust funds paid into the respondent's trust account. These allegations need to be investigated as a matter of urgency.

Trust shortages

[11] Of further concern is the allegation of possible trust shortages on the respondent's firm's trust account. These shortfalls are set out in the applicant's papers and reflect a significant trust shortage.

[12] The respondent's trust accounting records reflect, according to the applicant's papers, a known trust shortage of at least R4 740 915.07 on 28 February 2018 and R4 765 210.87 on 28 February 2019 and R7 310 523.33 on 30 June 2019. This represents a contravention of section 86(2) of the LPA, read together with Rule 54.14.8 of the Council's Rules in that the respondent did not ensure that the total amount and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting

records.

[13] The respondent's conduct above is also in contravention of Rule 54.14.10 of the Council's Rules in that the respondent did not immediately report in writing to the Council should the total amount of money in her trust banking account and money held as trust cash be less than the total amount of the credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reasons for the debit and proof of rectification.

[14] The aforesaid transgressions raise serious concerns about the status of the firm and the financial status of the firm's trust accounting records.

Suspension of the respondent

[15] It is imperative that the respondent be prevented from operating in any manner on any trust account or purported trust account on which she may be operating at any bank and, furthermore, that a curator *bonis* be appointed, in terms of the provisions of section 89 of the LPA, to control and administer such trust account(s) and also to take control of and administer the firm's files, records and documents with such powers as are normally granted to a curator *bonis* by the court.

[16] In terms of section 87(2) of the LPA, the applicant is further entitled to instruct its auditors to inspect the accounting records of any practitioner without any interference in order to satisfy itself that the provisions of section 86 and 87(1) have been observed, and, if on such inspection it is found that such practitioner has not complied with these provisions, the Council may cause the accounting records of the practitioner to be written up and audited and may recover from the practitioner the cost of the inspection or of such writing up, as the case may be. The applicant must therefore be allowed to investigate the respondent's firm's accounting record, something the respondent seemingly tries to avoid at all costs.

[17] It now appears that the respondent is employed as a conveyancing attorney with another firm. She states that she is not responsible for the management of the firm's trust account nor does she have any dealings with the firm's trust account. The respondent completely misses the point. This is irrelevant for purposes of this urgent application. Apart from the fact that the respondent should have informed

the Council of her whereabouts long ago, she still needs to account for the historical accounting practices of her erstwhile firm.

[18] She further states that her employment now by another attorneys' firm somehow *"countenances"* the applicant's grounds for urgency. Again, the applicant misses the point. She needs to account properly to the Council and to the court regarding the serious allegations against her. The fact that she is now employed by another firm in no way militates her standing as a legal practitioner in the eyes of the Council, the court and the public.

Conclusion

[19] This court holds the view that a suspension order is warranted on an urgent basis on the grounds set out in the applicant's papers which indicate that the respondent's trust account shows a deficit of no less than R 7 310 535.33. The respondent failed to report the trust deficit to the applicant. She moreover failed to cooperate with the applicant and its inspector in an inspection of her accounting records and practice affairs. Having regard to the complaints lodged against the respondent, I am of the view that the Council must be granted an opportunity to investigate these serious charges. This they can only do if they are granted proper access to the respondent's accounting records and files, something which she has avoided. All of these complaints seemingly have one thing in common and that is the *modus operandi* of the respondent to elicit money through fraudulent property transactions and keeping these payments illegally.

Uberrima Fides of an attorney

[20] The principles relating to the conduct expected from legal practitioners are now trite and need only be referred to briefly. The Court expects from a legal practitioner, *uberrima fides*, which is the highest possible degree of good faith in his or her dealings with clients and its trust account. In this regard the court in *Vassen v Law Society of the Cape of Good Hope*[2] made it clear that:

> *"…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*

[2] [1998] ZASCA 47; 1998(4) SA 532 (SCA) at page 538F-J

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. 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 persons on whose behalf it is held whenever it is required. 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."

[21] A legal practitioner, being a member of a respected and honourable profession, must display unquestionable integrity to society at large, to the profession and to the court.

[22] The application before the court is of a *sui generis* nature and in order to establish whether the respondent should be suspended (as was ordered in this matter) the court must exercise a three-stage enquiry which consists of the following steps: (i) Proof of the offending conduct on a balance of probabilities. (ii) If such conduct had been proven, the question of whether, in the light of the conduct, the respondent is not a *"fit and proper person"* to continue to practice as an attorney. (iii) If the respondent should be struck from the roll or alternatively suspended.

[23] I do not intend to dwell on an exposition of the principles applicable to each of these stages. Suffice to point out that I am satisfied on what is before the court in the papers of the applicant that an order suspending the applicant is warranted. The transgressions are undoubtedly serious and requires the urgent intervention of this court. To restate: The respondent has been practising as a legal practitioner without being in possession of a Fidelity Fund Certificate since 1 January 2020 which, in itself, places the public at risk in dealing with the respondent. This transgression is exponentially compounded by the fact that the substantial deficits

are reflected in the respondent's trust account. The applicant further states to the court that the respondent does not communicate with the Council regarding the status of her practice. It is trite that an attorney must scrupulously comply with the provisions of the LPA and the applicant's Rules promulgated thereunder especially in relation to the money of a client which is placed into his/her custody and control. Trust money does not form part of the assets of an attorney. The very essence of a trust fund is the absence of risk and the confidence created thereby. The unjustifiable handling of trust money is totally untenable and not only violates the legal requirements relating to trust money but also undermines the principle that a trust account is completely safe in respect of money held therein by an attorney on behalf of another person. See in this regard: *Kaplan v Incorporated Law Society, Transvaal:*[3]

> *"In exercising its discretion whether or not the applicant is a fit and proper person to be re-admitted as an attorney, the Court will have to consider his personal qualities and decide whether he is fit and proper in relation to such matters as the prestige, status and dignity of the profession, and the integrity, standards of professional conduct and responsibility of practitioners, the kind of personal qualities in respect of which a Law Society has to be satisfied in terms of s 16 as mentioned earlier in this judgment."*
>
> > *The prestige, status and dignity of the profession in turn relates to the position or image the profession has in the eyes of the public in general and 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.*
> >
> > *Whether a person is fit and proper to be re-admitted is certainly a matter on which the Court must exercise its discretion on the evidence placed before it.*

[3] 1981 (2) SA 762 (T)..

It is essential for the prestige, status and dignity of the profession that practitioners should not be identified with any form of dishonesty or dishonourable conduct in the eyes of the public at large, the Court and those concerned with the administration of justice."

[24] Lastly, this court has the inherent jurisdiction to discipline legal practitioners as was clearly articulated by the Court in *Prokureursorde van Transvaal* v *Kleynhans*:[4]

"Hierdie Hof het inherent die jurisdiksie om te beslis oor die geskiktheid van prokureurs. Sy jurisdiksie ontleen hy nie uitsluitlik aan a.22 van die Wet op Prokureurs nie. Law Society of the Cape of Good Hope v C 1986 (1) SA 616(A) op 638 C tot 639 F. Kyk ook Pesskin v The Incorporated Law Society 1966 (3) SA 719(T), waarin beslis is dat die Hof inherente jurisdiksie het om prokureurs toe te laat. Dit volg dat waar hierdie Hof hierdie bevoegdheid het, die Hof ook die applikant kan toelaat om die nodige gegewens voor hom te plaas. Hierdie Hof het die bevoegdheid om sy eie prosedure te reël. Dit is per slot van rekening 'n dissiplinêre ondersoek, nie 'n siviele geding nie. Die vraag of die jurisdiksie wat die applicant aan a. 22 van die Wet op Prokureurs ontleen geldig is, is dus nie wesenlik nie. Die geskilpunte draai om die geskiktheid van die respondent om as prokureur te praktiseer nie om die applicant se locus standi nie..."

[4] 1995 (1) SA 839 (T) at 851 E to G.

[25] An attorney therefore has no right to insist upon a disciplinary enquiry. In this regard Bertelsmann J and I de Villiers J held in *Law Society of the Northern Provinces v Soller*[5] as follows:

> *"It follows that the respondent has no right to insist upon a disciplinary enquiry being held prior to steps being taken for his removal from the roll. In fact, this Court could mero motu initiate steps to strike the respondent's name off the roll of attorneys, and could do so, albeit notionally, without reliance upon the applicant's co-operation or, indeed, against the applicant's wish*."

Order

[26] In the event the order was granted in terms of the draft which was submitted to the court.

AC BASSON
JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 18 August 2021.

Case number : 26408/2021

Appearances

For the Applicant : Adv. A. Van Der Westhuizen
Instructed by : Dyason Attorneys

[5] *2015 JDR 0339 (GP) at 8.*

For the Respondent	:
Instructed by	:
Date of the hearing	: 22 June 2021