



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

13 July 2022

DATE

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SIGNATURE

Case number: **59026/2019**

In the matter between:

**THE LEGAL PRACTICE COUNCIL OF SOUTH AFRICA**

Applicant

and

**MANTJITJI JACOB MAMABOLO**

Respondent

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**JUDGMENT**

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**BOKAKO AJ (TLHAPI J concurring)**

## **INTRODUCTION**

1. This is an application for the suspension of the respondent from practicing as an attorney of the above court alternatively, that the name of the respondent be struck from the roll of attorneys. The application is brought in accordance with the disciplinary procedures to adjudicate over his conduct which is alleged to be unprofessional, or dishonourable or unworthy as provided for in section 44(1) of the Legal Practice Act No 28 of 2014 (the LPA).
2. For the purposes of this application the applicant sent a final letter of demand to the Respondent, urging the Respondent to comply with the Applicant's outstanding requirements; however, the Respondent has failed to do so. On the 28th of August 2019 the main application was sent to Sheriff Roodepoort in order to attempt service of the application on the Respondent at the address the Applicant has on its records. On 03 September 2019 the Applicant's attorneys received a Return of Nonservice. In September 2019 the Applicant's attorneys appointed a tracer, HJ Tracing, in an attempt to trace the whereabouts of the Respondent. On 15 October 2019 a trace report was received. The report confirmed that the Respondent could not be traced.
3. The Applicant further made another attempt to serve the main application and same was sent to Sheriff Rustenburg 23 January 2020 as per the stated address in the above mentioned tracers report being 81 Kanniedood Street, Range View, Extension 4, Krugersdorp. On 13 February 2020 the Applicants attorneys received a Return of service which indicated that the application was served on Mrs Mamabolo (spouse), who informed the sheriff that the Respondent resides in Mpumalanga and that they are separated. In February 2020 the Applicant's

attorneys again appointed a tracer, Shadow Tracers, in an attempt to trace the whereabouts of the Respondent. On 28 February 2020 a trace report was received. The report confirmed that the Respondent could not be traced.

4. The Respondent did not oppose the application. On the 19th of December 2021 a notice of set down was advertised in the Sunday Times newspaper and lastly on the 20th of December 2021 a notice of set down was also advertised in the Star newspaper. A court order for a substituted service was granted on 20 November 2021.

### **BACKGROUND FACTS**

5. The salient facts in this matter are set out below. The Respondent was admitted as an attorney in the North Gauteng High Court on 12th June 2001 and was enrolled in this province and has been practicing as an attorney of this Court. The Respondent's name is still on the roll of attorneys and he is currently practising as an attorney for his own account and as a single practitioner under the style of Mamabolo (M.J.) Attorneys, in Gauteng but the address remains unknown.
6. According to the Applicant's records, the Respondent has not complied with the provisions of Rule 2, in that for the Attorneys profession, every person who is admitted and enrolled as an attorney shall within 30 (thirty) days of any change taking place in his or her personal details, including the address of his main office and postal address telephone numbers, lodge with the secretary of the Applicant a statement of such change and with the Registrar. It is evident that the Respondent did not comply with the Applicant's requirements.

7. The Applicant relied on the submissions made in its founding papers contending that that the purpose of this application is to submit facts which justifies this court in ordering that the Respondent be suspended from practising as an attorney.
8. The respondent failed to submit to the applicant his auditor's report for the year ending 28 February 2018.
9. The Applicant further contends that the respondent is practising as an attorney without being in possession of a fidelity fund certificate and he has done so since 1 January 2017. He is in arrears with subscription fees due to the applicant amounting to a total of R5 866.00.
10. The respondent did not attend to his clients' affairs with due diligence and contravened several provisions of the Attorneys' Act, Rules of the Attorneys Profession and Rules of the' Legal Practice Council.
11. The respondent has failed to submit to the applicant, within six months after the annual closing of his books of account, a report by its Auditor for the period ending 28 February 2018.
12. In respect of the fidelity fund certificate, the applicant addressed a letter to the respondent advising him that he contravened several rules of the Rules for the Attorneys' Profession and requesting the respondent to submit the said audit report and to obtain a fidelity fund certificate, annexures "FA2". The respondent did not reply to the applicant and failed to attend to the necessary as requested. Due to the fact that the respondent failed to submit his auditor's report for the year ending 28 February 2018 the respondent was not issued with a fidelity fund certificate. The respondent has therefore been practising without being in possession of a Fidelity Fund Certificate since 1 January 2017.

13. The seriousness of the respondent's conduct in practising without a Fidelity Fund certificate cannot be overemphasised. Firstly, his conduct is contrary to a peremptory legal requirement and the respondent made himself guilty of an offence. Secondly the respondent places his trust creditors whom may suffer pecuniary loss as a result of the misappropriation of his trust monies, at risk. In its entirety this state of affairs is unacceptable.
14. Another complaint was lodged by Aubrey Dumisani Mkhathswa on the 7<sup>th</sup> of March 2017. Annexure "FA3". Mkhathswa alleged that the respondent failed to attend to his matter with due diligence, in that he needed to get his truck from the police. On the 19<sup>th</sup> of June 2017, the applicant referred the complaint to the respondent and requested him to respond. The respondent failed to reply to the applicant. The respondent failed to execute his mandate and respond to Mr Mkhathswa or advise him of any progress made in his matter. This was in direct contravention of Rule 3 of the Code of Conduct in that the respondent failed to carry out the work in a competent and timely manner and failed to put the interests of his clients first.
15. Additional complaint was lodged by Lynette Nombuyiselo Gagela dated 27 November 2016. annexure "FA5". Gagela alleged that the respondent failed to attend to her matter with due diligence. She was referred to the respondent by her legal insurance, Lipco Law. The applicant referred the complaint to the respondent and requested him to respond thereto. On 15 August 2017, the respondent replied and stated that he was not responsible for payment, Gagela was not cooperative and that he did not receive payment from Lipco Law. Annexure "FA6".

16. The Applicant further made legal submissions in that, it is trite law that applications of this nature are sui generis and of a disciplinary nature. There is no lis between the Applicant and the Respondent. The Applicant, as custos morum of the profession merely places facts before the court for consideration.
17. The question whether an attorney is a fit and proper person in terms of Section 22(1)(d) of the Act is not dependent upon factual findings, but lies in the discretion of the Court.
18. The question as to whether the Applicant has discretion to approach the court is addressed by Section 72(6) of the Act wherein it is specifically stated as follows: Council's disciplinary powers S 72 (6) "the provisions of this section shall not affect the power of- a society to apply in terms of the provisions of this Act for the suspension from practice or the striking from the roll of any practitioner against whom an enquiry is being or has been conducted in terms of this Act in respect of the conduct which forms or formed the subject matter of such enquiry;
19. (b) a competent court, at the instance of the society concerned, to suspend any practitioner from practice or to strike him from the roll."
20. Further submitting that in matters of this nature the enquiry which the court must conduct is threefold, namely:
  - 20.1 The Court must first decide as a matter of fact whether the alleged offending conduct by the attorney has been established.
  - 20.2. If the Court is satisfied that the offending conduct has been established, a value judgment is required to decide whether the person concerned is not a fit and proper person to practice as an attorney.

21. If the Court decides that the attorney concerned is not a fit and proper person to practice 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 practice.
22. The Court's discretion must be based upon the facts before it and facts in question must be proven upon a balance of probabilities. The facts upon which the Court's discretion is based should be considered in their totality. The Court must not consider each issue in isolation.
23. An attorney must scrupulously comply with the provisions of the Attorneys Act 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.
24. An attorney must always regard the interest of his/her clients above his/her own and must exercise the highest degree of good faith in his/her dealings with his/her clients.
25. An attorney is a member of a learned, respected and honourable profession and, by entering it, he/she pledges himself/herself with total and unquestionable integrity to society at large, to the courts and to the profession.
26. The image and standing of the profession are judged by the conduct and reputation of all its members and, to maintain this confidence and trust, all members of the profession must exhibit the qualities set out above at all times.
25. The law expects from an attorney the highest possible degree of good faith in his dealings with his client, which implies that at all times his submissions and representations to client must be accurate, honest and frank.

26. In exercising our discretion, this court has to firstly establish if there was offending conduct on the part of the respondent. Once the court is satisfied that the offending misconduct has been established the next enquiry that would follow - would be whether he is fit and proper to continue to practise. In this regard the court has to weigh the complaint against the conduct expected of a legal practitioner. The court's role is not there to impose a penalty but the prime consideration is to ensure that the interests of the public is protected.
27. In summary the court is required to have regard to a threefold enquiry process, namely:
- (a) the court must first decide as a matter of fact whether the alleged offending conduct by the legal practitioner has been established;
  - (b) 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 a legal practitioner;
  - (c) if the court decides that the legal practitioner concerned is not a fit and proper person to practise as a legal practitioner, it must decide in the exercise of its discretion whether in all the circumstances of the case the legal practitioner in question is to be removed from the roll or merely suspended from practice. Ultimately this is a question of degree;
  - (d) the court's discretion must be based upon the facts before it and facts in question must be proven upon a balance of probabilities. The facts upon which the court's discretion is based should be considered in their totality. The court must not consider each issue in isolation.



28. In essence the respondent did not oppose the matter, but for the dealing with Lynette Nombuyiselo Gagela's complaint. Gagela alleged that the respondent failed to attend to her matter with due diligence. According to Applicant's submissions, it was said on 15 August 2017, the respondent replied and stated that he was not responsible for payment and that the complainant was not cooperative and that he never received any payment from Lipco Law. We note that the respondent has not responded to the allegations regarding the issue at hand adequately. As the regulator for the legal profession, the Legal Practice Council, is mandated to ensure that the legal practitioners comply with the relevant legislation and the code of conduct. The Legal Practice Council has the duty to act where a legal practitioner falls short on his/her conduct. All legal practitioners are required to conduct themselves with utmost honesty and integrity and in the best interests of their clients.
29. Regarding Mkhatswa matter, it is evident that the respondent failed to execute his mandate and respond to Mr Mkhatswa or advise him of any progress made in his matter. This was in direct contravention of Rule 3 of the Code of Conduct in that the respondent failed to carry out the work in a competent and timely manner and failed to put the interests of his clients first.
30. Section 41(1) of the Attorneys' Act provides that a practitioner shall not practise or act as a practitioner for his/her own account or in partnership unless she/he is in possession of a fidelity fund certificate. This stipulation is peremptory by nature and a contravention thereof is in terms of section 83(10) of the Attorneys' Act an offence punishable with a severe fine.

31. The purpose of the issue of a fidelity fund certificate is to protect the general public. The Legal Practitioner's Fidelity Fund was founded for the purpose of reimbursing persons who suffer pecuniary loss as a result of the theft committed by a practitioner.
32. A fidelity fund certificate is mainly issued on the strength of an unqualified auditor's report which must be submitted to the applicant within six months after the annual closing of the firm's books of account in terms of Rule 35.
33. However due to the fact that the respondent failed to submit his auditor's report for the year ending 28 February 2018 the respondent was not issued with a fidelity fund certificate.
34. The respondent has therefore been practising without being in possession of a Fidelity Fund Certificate since 1 January 2017.
35. The seriousness of the respondent's conduct in practising without a Fidelity Fund certificate cannot be overemphasised. Firstly, his conduct is contrary to a peremptory legal requirement and the respondent made himself guilty of an offence. Secondly, the respondent places his trust creditors whom may suffer pecuniary loss as a result of the misappropriation of his trust monies, at risk. In its entirety, this state of affairs is unacceptable.
36. With regard to the membership fees, the respondent did not make any submissions as expected. The fact however remains that he failed to timeously pay subscription fees to the Legal Practice Council.

37. It further cannot be gainsaid that the audit reports were not submitted timeously. The Respondent failed to submit his auditor's report for the year ending 28 February 2018 to the Applicant; the respondent is practicing as an attorney without being in possession of a fidelity fund certificate and he has done so since 1 January 2017; the respondent failed to properly attend to clients' files; and the Respondent contravened several provisions of the Attorneys' Act, Rules of the Attorneys Profession and Rules of the Legal Practice Council.
38. The respondent failed to pay to the Applicant his outstanding membership fees for the financial years ending July 2018 and July 2019. The respondent is in total arrears of R5 866.00.
39. The applicant pointed out that the respondent's conduct was serious. By virtue of both the Attorneys Act and the Legal Practice Act, his conduct is considered to be serious transgressions.
40. We have noted that from his non responsiveness that the respondent does not proffer any explanation nor response for his conduct in practising without fidelity fund certificates.
41. It is a fundamental duty of every practising attorney to ensure that the books of the firm are properly kept and there are sufficient funds at all times to meet the trust account claims. The keeping of proper accounting records underpins the rationale that the interest of the public must be protected at all times. Any failure to do so would be considered to be serious. It is paramount for a legal practitioner to ensure that the trust account is managed properly. The very essence of a trust is the absence of risk.

42. As alluded to above the issue for determination is whether the misconduct in question is so serious and of a nature that it manifests the lack of integrity and dishonesty rendering him unfit to be a legal practitioner. In our view non responsiveness to clients in itself, portrayed dishonesty and a lack of integrity on his part.
43. This then brings us to what the appropriate sanction would be. It was submitted that his misconduct warrants his suspension. It is expected of a legal practitioner to comply with the provisions of the Legal Practice Act, the Attorneys Act and the rules of the attorneys' profession.
44. A legal practitioner is duty bound to act in the interest of his/her clients above his/her own and in so doing, exercise the highest degree of good faith in his/her dealings with his/her clients.
45. As the regulator for the legal profession, the Legal Practice Council, is mandated to ensure that the legal practitioners comply with the relevant legislation and the code of conduct. The Legal Practice Council has the duty to act where a legal practitioner falls short on his/her conduct. All legal practitioners are required to conduct themselves with utmost honesty and integrity and in the best interests of their clients.
46. In the exercise of our discretion, having considered the facts in their totality and having heard submissions of the Applicant, we find that the respondent's acts of misconduct were serious and dishonest. We are mindful that the main consideration is the protection of the public.
47. In our consideration we did not only consider his failure to administer his office. He failed to adequately address the various allegations against him. This court was therefore limited to make a finding on the papers before it.

48. It is a fundamental duty of every practising attorney to ensure that the books of the firm are properly kept and there are sufficient funds at all times to meet the trust account claims. The keeping of proper accounting records underpins the rationale that the interest of the public must be protected at all times. Any failure to do so would be considered to be serious. It is paramount for a legal practitioner to ensure that the trust account is managed properly. The very essence of a trust is the absence of risk.
49. As alluded to above the issue for determination is whether the misconduct in question is so serious and of a nature that it manifests the lack of integrity and dishonesty rendering him unfit to be a legal practitioner.
50. Rules 54.21, 54.23 and 54.24 of the LPC Rules in that he failed and/or neglected to file his firm's opening audit report within or at the required time; Rules 54.23, 54.24 and 54.29 of the LPC Rules in that he failed and/or neglected to file his firm's unqualified audit reports within or at the required time; Clause 16.3 of the Code of Conduct in that he failed to comply timeously with directions from the Applicant; Rules 4.1 and 6 of the LPC Rules read together with Clause 3.16 of the Code of Conduct, in that he failed and/or neglected to pay his annual subscription fees to the Applicant; Section 85(1)(b) of the Legal Practice Act read together with Rule 27.1 Clause 16.1 of the Code of Conduct in that he failed, within a reasonable time, to reply to all communications which require an answer unless good cause for refusing an answer exists;
51. and Clause 16.2 of the Code of Conduct in that he failed to respond timeously and fully to requests from the Applicant for information and/or documentation which he was able to provide.

52. We note that the respondent has not responded to all the allegations particularly regarding the issue of the fidelity fund certificates. It is evident that he never denied that he was serving the public without being in possession of fidelity fund certificates. The applicant pointed out that the respondent's conduct was serious. By virtue of both the Attorneys Act and the Legal Practice Act, his conduct is considered to be serious transgressions.
53. In our view such contraventions are serious, this in itself, portrayed dishonesty and a lack of integrity on his part.
54. This then brings us to what the appropriate sanction would be. It was submitted that his contraventions warrant his suspension.
55. It is expected of a legal practitioner to comply with the provisions of the Legal Practice Act, the Attorneys Act and the rules of the attorneys' profession. The issue of fidelity certificate compliance is at the helm of legal practitioners' practice.
56. The unjustifiable noncompliance of fidelity certificate and failure to submit audited statements is totally untenable and not only frustrates 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 a legal practitioner on behalf of another person.
57. It is trite that in applications of this nature, there is no *lis* between the applicant and the respondent. The applicant, by virtue of its statutory duties, furnishes the court with the relevant facts and findings.

58. Ultimately the court has to exercise its own discretion after reading papers. As alluded to above, the Respondent never filed any papers. He failed to address various allegations against him. This court was therefore limited to make a finding on the papers before it.

## **CONCLUSION**

59. We do find that there can be no denial that the Respondent has contravened various Rules of the Applicant and the provisions of the Attorneys Act. Taking into account the totality of the Respondent's infractions, there can be no argument that his conduct is indeed dishonourable, unprofessional and unworthy of a practitioner. The Respondent's conduct constitutes a material deviation from the standards of professional conduct which is expected of a practitioner.
60. Further, there can be no denial that the Respondent has contravened various Rules of the Attorneys Profession, the Legal Practice Act, the Code of Conduct and the LPC Rules. Taking into account the totality of the Respondent's infractions, there can be no argument that his conduct is indeed dishonourable, unprofessional and unworthy of a practitioner. Therefore, the Respondent's conduct constitutes a material deviation from the standards of professional conduct which is expected of a legal practitioner.
61. The conduct of the Respondent is, inter alia, in contravention of the following provisions of the Legal Practice Act Legal Practice Act, the Code of Conduct and the LPC Rules: The Respondent is in contravention of Sections 84(1) and 84(2) of the LPA in that he is practising without being in possession of Fidelity Fund Certificates for the years as stipulated. and while practising or acting as such, receives and accepts fees, rewards and disbursements from clients.

62. The conduct of the Respondent is, inter alia, in contravention of the following provisions of the Legal Practice Act Legal Practice Act, the Code of Conduct and the LPC Rules.
63. In the circumstances the suspension of his name from the roll of legal practitioners is justified.
64. We are mindful that the applicant is entitled to costs. An order has been sought that the respondent pay the costs of this application on the scale as between attorney and client. We have considered the submissions and find that in these circumstances punitive costs is justified.

### **ORDER**

65. In the result the draft order uploaded on CaseLines under section 021 as amended is granted and hereby made an order of court.



**BOKAKO T**  
**(ACTING JUDGE OF THE HIGH COURT)**

I, agree



**TLHAPI V V**  
**(JUDGE OF THE HIGH COURT)**