

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2022-12-06

DATE

SIGNATURE

Case Number: 422/2021

In the matter between:

**SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

Applicant

and

**KOKOLOANE CYRIL PITJENG**

Respondent

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**JUDGMENT**

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**POTTERILL J**

### Background

- [1] On 2 September 2021, this Court suspended the respondent from practising as an attorney pending finalisation of the application. The Court also ordered the respondent to show cause on or before 28 April 2022 why his name should not be struck from the roll of legal practitioners. The respondent filed an answering affidavit shortly before the return date. On the return date, the application was postponed to 24 November 2022, the rule *nisi* was extended, and the respondent was ordered to file a condonation application for the late filing of his answering affidavit on or before 31 May 2022. The respondent filed an application for condonation, but was not present on the return date of 24 November 2022.
- [2] The respondent was admitted as a legal practitioner (as an attorney) on 28 August 2012. Until his suspension, he was practising as a sole practitioner under the style of Pitjeng (KC) Attorneys in Roodepoort, Gauteng. He commenced practising under Pitjeng (KC) Attorneys on 3 February 2016.

### Conduct of a legal practitioner pursuant to suspension

- [3] Where an order of suspension has been granted the Supreme Court of Appeal has expressed that the conduct required of practitioners in proceedings of this nature<sup>1</sup> must place the full facts before Court for the Court to come to the correct conclusion. Broad denials, evasiveness, and obstructionism should not form part of disciplinary proceedings.<sup>2</sup> As officers of the Court, practitioners are at all times expected to be scrupulously honest and observe the utmost good faith in their dealings with the Court, even if it means disclosing information which may be adverse to their own interests.<sup>3</sup> Where allegations and evidence are presented against a legal practitioner, they cannot simply be brushed aside, the

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<sup>1</sup> *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853G-H; *Law Society of the Northern Provinces v Mogami & Others* 2010 (1) SA 186 (SCA) at 195-196 par 26

<sup>2</sup> *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 853G-H

<sup>3</sup> *Hewetson v Law Society of the Free State* 2020 (5) SA 86 (SCA) at par 49

legal practitioner concerned is expected to respond meaningfully to them and to furnish a proper explanation.<sup>4</sup>

### The offences

- [4] Since 14 August 2009, every attorney who, for the first time, practises for their own account or as a partner in a firm of attorneys, has been required to attend and complete a practice management course. The respondent was required to attend and complete this course on or before 31 December 2017. He has not done so.
- [5] The respondent as required to submit an auditor's report to the Council within six months of commencing practice, covering the first four months of such practice. This report is commonly referred to as an opening auditor's report and, in the respondent's instance, was due for submission on or before 31 August 2016. He did not do so.
- [6] The respondent is also required to submit annual auditor's reports to the Council, reporting on his firm's trust affairs, within 6 months of each financial year end. The respondent has not filed any such reports from inception of his practice, for the 2017, 2018, 2019 and 2020 years.
- [7] Section 84(1) of the Legal Practice Act 28 of 2014 enjoins every attorney who practises or is deemed to practise for his or her own account to be in possession of a Fidelity Fund Certificate [FFC]. Section 41(1) of the Attorneys Act contained a similar requirement. An FFC is issued annually and is valid from 1 January until 31 December. It is generally issued on the strength of an unqualified annual auditor's report.

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<sup>4</sup> *Hepple v Law Society of the Northern Provinces* 2014 JDR 1078 at par 9

The respondent was not in possession of an FFC from inception of his practice on 3 February 2016. As a result of his failure to submit his opening and annual auditor's reports to the Council, and his failure to attend and complete the PMT course, he has not qualified for and has not been issued with FFCs since 1 January 2017.

#### Analysis of respondent's conduct

- [8] The respondent's conduct is serious. Not having a FFC is a contravention of a peremptory norm, which is intent upon safeguarding the public, and he committed an offence, which is punishable by a fine or imprisonment.
  
- [9] Every legal practitioner who is admitted and enrolled as such is required to pay an annual fee to the Council. The respondent has not paid his membership fees to the Council for the 2017, 2018, 2019 and 20202 years. These fees amount to R14 162.00 and they remain outstanding.
  
- [10] The respondent appeared before a disciplinary committee of the Council on 21 November 2016 on a charge relating to his failure to submit his opening auditor's report. The respondent pleaded guilty to the charge. A fine was imposed in the amount of R4 000.00 of which R2 000.00 was suspended for 3 years on condition that he not be found guilty of a similar offence during the suspension period. The respondent failed to pay the fine imposed by the disciplinary committee and has persisted in his failure to submit his opening auditor's report.
  
- [11] The Council addressed letters to the respondent, *inter alia*, recording his continued failure to submit his opening auditor's report, his failure to submit his



annual auditor's reports and that he is practising without being in possession of an FFC. The respondent did not reply to these letters nor remedy his conduct.

- [12] The Council addressed a letter to the respondent on 21 February 2020 calling upon him to appear before a disciplinary committee of the Council on 16 March 2020 to answer to charges relating to his failure to submit his 2017, 2018 and 2019 auditor's reports, his failure to pay his annual membership fees, and for practising without being in possession of an FFC. The respondent did not respond to the Council's letter nor did he appear before the disciplinary committee.

#### Respondent's opposition

- [13] In answer the respondent alleged that his accounts had been closed. He did not provide any further detail in this regard and although he attached a document that refers to as proof of his banking details, scrutiny of the document reveals that it is confirmation of the existence of a business account for *Afriq Attorneys*. It is not proof of anything in relation to the respondent's firm. He thus denies that he needed a Fidelity Fund Certificate, pay membership fees or attend the Legal Practice Management Training.
- [14] Even if we were to accept that the respondent's practice is closed; practitioners are required to close their practice in compliance with the Rules. The respondent has not done so. If his assertions are accepted at face value, he appears to have simply abandoned his practice. He submitted that he had taken up employment with other employees. The fact that he had taken up employment with other employees was not a bar to him practising and thus having to comply with the Rules.

#### Guilty of conduct

- [15] The respondent has failed to comply with peremptory obligations and legislative safeguards intended to protect the public. He has done so for several years and has been unmoved by the Council's efforts to bring him into compliance. He remains non-compliant, notwithstanding these efforts and the pursuit of these proceedings.
- [16] The high-water mark of the respondent's answer is to allege that he has never represented or acted for any person or presented himself to any person or Court as a practising legal practitioner and has never operated any offices or conducted any business as a legal practitioner. However, the respondent opened a legal practice and a trust banking account and informed the Council accordingly. All of the legal consequences of having opened his practice follow, regardless of whether or not any clients have been serviced. He is deemed to have practised. He did attend disciplinary proceedings before a disciplinary committee and pleaded guilty to a charge relating to his failure to submit an opening auditor's report. His assertions leave this conduct unaddressed and not in compliance with the conduct required of him pursuant to suspension. The respondent's conduct does not meet the standard of behaviour, conduct and reputation which is required of attorneys and officers of the Honourable Court. He can no longer be considered a fit and proper person to be allowed to practise as a member of a learned, respected and honourable profession.
- [17] The question before Court is whether the respondent should be permitted to continue practising as a legal practitioner in the prevailing circumstances.<sup>5</sup> The Court may make such order it deems appropriate in the circumstances. The exercise of this discretion is not bound by rules, and precedents consequently have a limited value.

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<sup>5</sup> *Law Society Cape v Peter* 2009 (2) SA 27 (SCA) par 28

Having regard to all the circumstances brought before me, I am satisfied that the respondent is not a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to an attorney. For the sake of the public, and no less the profession, it is of the utmost importance to enforce on all attorneys the high standard of duty which rests upon them and demand the great integrity which is expected of them.<sup>6</sup>

[18] The respondent has been in possession of the present application for 21 months. His answer does not address his conduct, and he appears unmoved to remedy his outstanding affairs. His consistent nonchalance reflects a dire lack of insight into the seriousness of his conduct.

[19] The respondent was called upon to show cause why his name should not be struck from the roll. Him having not addressed his conduct, it is submitted that he has failed to show cause.

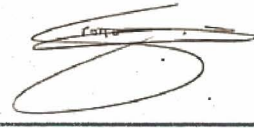
[20] The Court is satisfied that his name be struck from the roll.

[21] The following order is made:

The draft order marked "X" is made an order of Court.

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<sup>6</sup> *Incorporated Law Society, Transvaal v Visse and Others; Incorporated Law Society Transvaal v Viljoen* 1958 (4) SA 115 (T) at 131D-G

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**S. POTTERILL**

**JUDGE OF THE HIGH COURT**

I agree

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**A. CAJEE**

**ACTING JUDGE OF THE HIGH COURT**



CASE NO: 422/2021

HEARD ON: 24 November 2022

FOR THE APPLICANT: MR. L. GROOME

INSTRUCTED BY: Rooth & Wessels Attorneys

FOR THE RESPONDENT: NO APPEARANCE

DATE OF JUDGMENT: 6 December 2022