

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

13516/2008

DATE:

19 NOVEMBER 2008

5 In the matter between:

LAW SOCIETY OF THE CAPE OF

GOOD HOPE

APPLICANT

versus

P M MGWEBILE

RESPONDENT

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JUDGMENT

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GAUNTLETT, A J:

In this matter, the Law Society of the Cape seeks an order
against the respondent directing him:

20 "To produce for inspection the office file and trust
ledger account relating to the matter of
Ms Mbaliswana, as requested on 25 March 2008,
within 10 (ten days) of the date of the granting of
this order, together with an order as to costs."

25 Briefly, Ms Mantane, a councillor of the Law Society, has

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deposed to the fact that the Law Society is engaged in investigating a complaint by a Mrs C Howie on behalf of a domestic worker, Ms Mbaliswana. It appears that it is alleged that Ms Mbaliswana had engaged the respondent to represent her son in relation to a criminal defence matter. The contention furthermore is that the respondent had charged an excessive fee in relation to the conduct of that matter, which was discovered by Mrs Howie on her return from Bloemfontein earlier this year.

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The affidavit refers to the provisions of section 70(1) of the Attorneys Act, which empowers the Law Society to demand any practitioner to produce for inspection:-

15 "...any book, record or thing which is in the possession or custody or under the control of such practitioner and which relates to his practice..."

The respondent was previously found guilty of unprofessional conduct on 12 November 2007 for contravening Law Society Rule 14.3.7 in that he had failed to account faithfully, accurately and timeously for the R5 000,00 paid to him on behalf of Ms Mbaliswana. Following, it is said, a failure by him to respond, the applicant instructed the sheriff on 25 March 2008 to uplift the client file and the trust ledger

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account relating to Ms Mbaliwana from the respondent's office, pursuant to the provisions of section 70.

The affidavit further records the fact that the sheriff has made six attempts to serve a letter of demand and to uplift the file and trust ledger account, but on each occasion the sheriff attended at the respondent's office, the respondent was not available.

10 Appearing before me in person, the respondent has applied for a postponement of this application. In support of this application he has tendered an affidavit which addresses the following. First of all, he seeks to explain the delay between the service of the application on 20 October 2008 and the filing
15 of the affidavit by stating that he was first advised on 12 November 2008 by his secretary that they had indeed been served. The explanation, by way of hearsay, is that the secretary "forgot them".

20 The explanation relating to the delay since then which is tendered by the respondent is that:

"Subsequently to 12 November, I could not attend to the matter as I had trials".

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The respondent attended upon me in chambers yesterday morning, whereupon he informed me that he intended to seek a postponement of this application. I indicated to him that this was a matter in relation to which I would have to hear argument today in court, and I advised him that if he wished to prepare an affidavit, and to engage other legal representation, he should do so within the day's opportunity thus afforded to him. He has since, as I have indicated, tendered the affidavit in question, in which he records the fact that he sought the services of a particular senior counsel, but was informed that he is in Johannesburg, whereupon he:

15 "...then consulted with another advocate, who
advised me to draft an affidavit to support my
application for the postponement".

The basis of the application before me appears essentially to
be that:

20 "As this is an old matter arising in 2005, the
information I so seek to prepare for my defence is
not easily accessible,"

It seems to me that this misconceives the situation. The
25 position is that the Law Society at this stage seeks no

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substantive relief against the respondent, but an interlocutory order directing the production for its inspection of an office file and trust ledger account, as I have already noted. The respondent was not able to advance any reason why the reliance by the Law Society on the provisions of section 70 is misconceived, nor to explain why the allegations in that affidavit were not, in the simplest terms, traversed by him as a qualified legal practitioner in the affidavit which he has put forward.

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In the circumstances, it seems to me that no proper basis has been made out at all for the postponement which has been sought.

15 I have also afforded the respondent an opportunity to address me in relation to the relief sought in the application. As I have already indicated, he has had an opportunity to address this both in the affidavit which he has tendered, and in the course of oral argument before me. He has advanced no
20 basis whatsoever as to why the interlocutory relief sought by the Law Society, against the background of the considerable delays to which I have referred and the multiple efforts by the sheriff to obtain the documents, should not be granted.

25 In all these circumstances, it seems to me that there is no

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basis whatsoever which has been established for the failure by the respondent either to respond in the period since on his own showing he had knowledge of this application (that is at least 12 November) or to respond to the relief sought. In oral argument before me, he indicated that the office file and trust ledger account "may" exist and "may" be held in the house from which he evidently conducts his practice. This can be no satisfactory or acceptable answer. Clearly he is required by law to have such documentation. Moreover, he has had at least since 12 November to investigate their existence or otherwise, and to put up the simplest of affidavits addressing that.

Thirdly, it would be noted, the Law Society seeks relief in terms which would afford the respondent a full ten days to identify and to produce the required documentation, or otherwise to advise the Law Society that neither the office file or trust ledger account exist, which may of course in itself give rise to other proceedings.

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In all the circumstances, I grant an order in terms of the notice of motion as follows:

- 25 1. Directing the respondent to produce for inspection
 the office file and trust ledger account relating to

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the matter of Ms Mbaliswana, as requested on 25
March 2008, within ten days of the date of the
granting of this order;

- 5 2. Directing the respondent to pay the costs of this
application.”

So ordered.

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GAUNTLETT, A J

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