

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No:

18621/2009

In the matter between:

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

Appellant

Versus

PETRUS JOHANNES ROODT

Respondent

JUDGMENT DELIVERED ON 28 MAY 2010

Allie, J

[1] The Law Society of the Cape of Good Hope seeks to have the name of the respondent, Petrus Jacobus Roodt struck off the roll of attorneys of this court. Further relief is sought to compel the respondent to deliver his certificate of enrolment as an attorney to the Registrar of this court, failing which the Sheriff should be authorised to take possession and so deliver the certificate. An order is also sought to compel the respondent to deliver his books of account, records, files and documents pertaining to his practice as an attorney to the Director of the Society who should be appointed as curator to administer and control the trust funds of the respondent. The applicant also prays that the respondent be interdicted from operating on his trust account. Lastly the respondent is to be directed to pay the fees and expenses of the curator and any person consulted by the curator.

[2] The respondent was admitted as an attorney in the Transvaal Provincial Division, as it then was, on 10 January 1995 and enrolled in this division as an attorney on 12 March 2002. He practised as an attorney for his own account in Wynberg, Cape Town from 25 February 2002. On 10 May 2004, he was

interdicted from practising as an attorney by this division under case no. 3432/2004.

[3] On 3 October 2003, the respondent caused the sum of R22 500,00 being a debt collection payment made by a debtor of his client, to be deposited into his business bank account. That was a contravention of Section 78(4) of the Attorneys Act 53 of 1979 and numerous rules of the Society.

[4] On 5 December 2003 a purchaser of immovable property paid to respondent R164 000 as a deposit. The respondent proceeded to transfer R79 000 of that money into his business account. That was a contravention of Section 78(4) of the Attorneys Act and of various rules of the Society and of Section 26(1)(a) of the Alienation of Land Act. Section 26(1)(a) reads as follows: *“No person shall by virtue of a deed of alienation relating to an erf or a unit receive any consideration until such erf or unit is registrable.”* As the amount misappropriated by the respondent formed part of a deposit on a purchase price, the property was not registrable and the respondent was not entitled to “receive” the money.

[5] On 19 December 2003 a client paid R300 000 to the respondent who was obliged to pay the money over to another attorney. Respondent only paid over R100 000 and failed to pay the balance of R200 000.

[6] On 30 May 2007 the respondent concluded a plea and sentence agreement relating to the three counts of theft that he was charged with in the Special Commercial Crimes Court. He admitted stealing money from his trust

account and to being reckless in operating his trust account. He was sentenced to 7 years imprisonment, which was suspended for 5 years on condition that he pays the Attorneys Fidelity Fund the sum R274 000. By 15 October 2007 he had paid the Fidelity Fund in full.

[7] The Attorneys Fidelity Fund paid out claims and incurred expenses in the amount of R346 060,96 arising out of the respondent's misappropriation of funds.

[8] On 25 September 2009, the respondent gave notice of his intention to oppose this application. The respondent failed to file his answering papers.

[9] The respondent contravened Section 78(4) of the Attorneys Act, 1979 which provides that:

“Any practising attorney shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person, of any money invested by him in a trust savings or other interest-bearing account referred to in subsection (2) or (2A) and of any interest on money so invested which is paid over or credited to him”.

[10] He has also contravened several of the rules of the Law Society of the Cape of Good Hope. He has further contravened Section 26(1)(a) of the Alienation of Land Act.

[11] Attorneys are officers of the court and a high standard of honesty and integrity is expected of them because they are the people in whom the public ought to have sufficient confidence to trust them with their affairs and with their funds.

[12] In **Incorporated Law Society, Tvl v Visse and Others 1958 (4) SA 115 (T) at 131 D-G** the court said the following concerning the position of an attorney.

“The court admits an attorney to the profession and he is put in a position to conduct matters of trust with the public. He occupies a position of great confidence and power and the court is entitled to demand a very high standard of honour from him in the profession. The law exacts from him uberrimae fides where he acts as agent for others; that is the highest possible degree of good faith. It is, therefore, essential that the public should be able to rely implicitly on the integrity and good faith of any attorney they may wish to employ. ...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.”

[13] In **Law Society Transvaal v Matthews 1989 (4) SA 389 (T)** the court held as follows at 395:

“An attorney is a member of a learned, respected and honourable profession and, by entering it, he pledges himself with total and unquestionable integrity to society at large, to the courts and to the profession....”

[14] In *Law Society of the Cape of Good Hope v Budricks* 2003 (2) SA 11 (SCA) at 17i-j the court held as follows: *"Not only did he treat the board's instructions with disdain but in the process committed about the worst professional sin that an attorney can commit by misappropriating trust funds. He did so methodically over a substantial period of time and in respect of large sums of money."*

[15] In applying the three-stage inquiry set out in **Jasat v Natal Law Society 2000 (3) SA 44 (A)** in the exercise of the court's disciplinary function as provided for in Section 22 of the Attorneys Act, firstly the offending conduct has clearly been established in as much as it has been acknowledged by the respondent. Secondly the respondent is not a fit and proper person to continue to practise as contemplated by Section 22(1)(d) of the Attorneys Act in as much as he has breached a fiduciary duty and position of trust that he held as an attorney and as someone entrusted to operate an Attorney's Trust Account. The circumstances surrounding the theft of the trust monies in this case are very grave. I am of the view that an appropriate sanction that will protect society from such conduct and prevent the respondent from dealing with trust funds until he can satisfy the court that he has rehabilitated, is an order that he be struck off the roll of attorneys.

[16] An order is made in terms of paragraphs 1 to 11 of the Notice of Motion.



ALLIE, J

I agree



FORTUIN, J