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

Case no: 9988/12

In the matter between:

THE CAPE BAR COUNCIL Applicant

and

THEMBELANI SILINGA Respondent

JUDGMENT: 30 OCTOBER 2013

Schippers J:

[1] This is an application by the Cape Bar Council ("the Council") for an order striking the respondent's name from the roll of advocates, in terms of s 7(1)(d) of the Admission of Advocates Act 74 of 1964 ("the Act"), on the basis that he is not a fit and proper person to continue to practise as an advocate.

[2] The respondent has given notice of his intention to oppose the application. However, he did not deliver an opposing affidavit until two minutes before the application was heard on 18 October 2013. Before that, on 7 September 2012 he filed a document in which he raises a number of preliminary points, in essence that the Council has acted procedurally unfairly in not holding a disciplinary hearing before launching this application. He says that this iscontrary to the provisions of s 3(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), and that the application is premature and falls to be dismissed with costs.

The application for a postponement

[3] As already stated, on the morning of the hearing on 18 October 2013, the respondent delivered an application to postpone the matter. The Council opposed the application. In the founding affidavit the respondent says that a postponement is necessary to give his legal representatives “an opportunity to acquaint themselves with the matter at hand”. He goes on to say that he is being assisted on a *pro bono* basis; that he approached counsel for advice on 11 October 2013; that counsel referred him to his attorneys of record; and that the attorneys had moved to new premises and could not immediately assist him. His answering affidavit in the striking-off application (unsigned) is incorporated by reference in the founding affidavit in the application for a postponement.Mr

Fisher, who appeared for the respondent, confirmed that the latter had drafted the answering affidavit. We allowed the late filing of the answering affidavit and the respondent was thus not prejudiced.

[4] After hearing argument by Mr Fisher,the application for a postponement was refused, essentially for the following reasons. The respondent's unpreparedness was due to slackness. It was not explained. And given the nature and history of the matter, and the prejudice to the Council and members of the public, we considered that it would not be fair and just to grant a postponement.[1]

[5] The striking off-application was launched on 23 May 2012. On the same day the founding papers were served on the respondent personally by the sheriff at the Commercial Crimes Court, Bellville. On 6 June 2012 the respondent filed a notice of intention to oppose. However, he did not file any answering affidavit as he is required to do by the Rules of Court. There is no explanation for this.

[6] On 7 September 2012 the respondent filed a document styled, "Points *in Limine*". Still, no answering affidavit was filed. On 23 April 2013 the Council's supplementary affidavit was served by the sheriff on the respondent's

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1 *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (NmS) at 315B-G.

mother in Langa. Between that date and the date of the notice of set-down -16 September 2013 – some five months - the respondent did not deliver an answering affidavit. There is no explanation for this either.

[7] On 19 September 2013 the notice of set-down was served on the respondent's mother and on 11 October 2013 the respondent approached his attorneys. There is likewise no explanation for his inaction between 19 September 2013 and 11 October 2013.

[8] What all of this shows, is that the respondent, an advocate, has been inexcusably slack in delivering his answering affidavit. He has not advanced any reasonwhy he could not file the answering affidavit annexed to the founding affidavit in the application for a postponement, sooner. That answering affidavit is a response to both the founding and supplementary papers in the striking-off application.

[9] There are serious allegations of dishonesty and misconduct against the respondent, involving the administration of justice, the public and the interests of the profession. The matter therefore does not brook any delay.

[10] On his own showing, the respondent was not prejudicedby the refusal of the postponement sought. The founding affidavit in the postponement

application states that alternatively to making changes to the answering affidavit in the striking-off application and preparing heads of argument, the respondent's counsel "will argue the matter on the papers as it stands, including the draft Answering Affidavit".

[11] That is precisely what happened. Pursuant to the refusal of the postponement, Mr Fisher argued the striking-off application, with reference to and in reliance upon,the answering affidavit.

[12] The grounds for the application may be summarized as follows. The respondent is dishonest. He falsely informed the court that he was acting on the instructions of an attorney when this was not the case. He accepted instructions directly from members of the public without being instructed by an attorney or the Legal Aid Board. The respondent is guilty of gross non-discharge of professional duty. On more than one occasion he failed to appear in court after criminal cases in which he represented accused persons were postponed by prior arrangement with him for trial. In some of these cases the accused had been in custody for months. The respondent performed the functions of an attorney without being admitted as an attorney. He solicited payment of money from a member of the public in contravention of s 83(10) of the Attorneys Act 53 of 1979 and the rules governing the conduct of advocates.

[13] There are four complaints against the respondent. The first three concern dishonesty and gross non-discharge of professional duty, in respect of which three regional court magistrates have made affidavits. The fourth complaint was made by a member of the public, Ms Gladys Ntloko ("Ntloko"), to whom the respondent rendered services as an attorney and failed to account for the sum of R10 000.

The complaint by Magistrate Marais

[14] The late MrMarthinusMarais ("Magistrate Marais") who at the relevant times presided in Parow Regional Court 3, lodged the first complaint with the Council. In his affidavit he states that on 10 June 2009the respondent represented MrMeshack ("Meshack") on a charge of robbery with aggravating circumstances. He asked the respondent who his instructing attorney was. The latter replied that he had been instructed by Ralawe Attorneys of 100 Voortrekker Road, Goodwood. The case was postponed to 2 July 2009.

[15] The respondent did not appearon 2 July 2009. An attorney, MrObose ("Obose") appeared for Meshack. He told the court that he was standing in for the respondent and Magistrate Marais noted on the charge sheet that Obose, who confirmed that he was in possession of trial particulars in the case, was the instructing attorney. The case was postponed to 3 August 2009. I pause to

mention that Meshack, in an affidavit, says that he does not know Obose at all and never dealt with him; and that he instructed the respondent directly at his (the respondent's) house.

[16] The respondent did not appear on 3 August 2009. The case was then postponed to 21 August 2009 for him to be present at court.

[17] When the case was called on 21 August 2009 the respondent was absent. However, at 15h43 the case was recalled and the respondent appeared. He apologised for not appearing on 3 August 2009 and informed the court that the reason for his absence was "a lack of financial instructions". He told the court that the case could be set down for trial as he had been placed in funds to conduct the trial; and that he would get the further particulars from Obose. The case was postponed to 24 August 2009 for the arrangement of a trial date.

[18] On 24 August 2009 the respondent appeared and confirmed that he had sufficient funds to represent Meshack. The case was postponed to 29 September 2009 for trial in the backlog court, by prior arrangement with the respondent. That court was established specifically to lessen the burden on the rolls of other regional courts.

[19] However, on 29 September 2009 the respondent did not appear in court. There was no instructing attorney. Meshack and accused no. 2, the State witnesses and the attorney for accused no. 2 were present. The prosecutor, Mr Van der Berg ("Van der Berg"), telephoned the respondent who told him that he was he was driving through Worcester at the time, on his way back to Cape Town. The respondent wanted to arrange a date for further particulars. Van der Berg refused and reminded him that the case had been set down for trial, and that the respondent should appear in court as he was about an hour away. The respondent insisted on arranging a date and said that he was not ready to proceed with the trial. All of this is contained in an affidavit by Van der Berg, which the respondent has neither challenged nor disputed.

[20] The respondent simply did not come to court on 29 September 2009. The State obviously could not proceed with the trial. Meshack informed the court that he had appointed the respondent himself and that there was no instructing attorney. Due to the respondent's non-appearance, the matter was postponed to 6 October 2009 and referred back to Parow Regional Court.

[21] On 6 October 2009 the respondent did not appear. Oboseagain appeared and informed the court that neither he nor the respondent was going to represent Meshack any further. The latter then informed the court that he wished to approach another attorney.

[22] The respondent does not really dispute the contents of the affidavit by Magistrate Marais. His answer to the allegation that Obose was his instructing attorney is startling and indicative of his dishonesty. He says that he "bears no knowledge" of the allegation and "puts applicant to the proof thereof". One would have thought that the respondent, an officer of the court, and one from whom the highest standard of conduct is exacted by the profession and the Courts, would simply state whether or not Obose, who appeared not once, but twice on his behalf, was his instructing attorney.

[23] The reason for the respondent's evasiveness is not far to seek. He told Magistrate Marais that Ralawe Attorneys had instructed him. Indeed this is common cause. But the statement that Ralawe were the instructing attorneys is not true. MrRalawe ("Ralawe"), an attorney who practises at 100 Voortrekker Road, Goodwood, has deposed to an affidavit in which he says that he never instructed the respondent; that he has never held any monies in trust on behalf of the respondent; and that he has never shared offices with the respondent. There is simply no reason for Ralawe to fabricate this evidence. And its truth and reliability is underscored by the fact that Obose– not Ralawe - on two occasions stood in at court for the respondent on dates to which the case had been postponed. This could only have happened with the prior arrangement of the respondent. In fact, the respondent informed the court on 21 August 2009 that he would obtain the further particulars from Obose. He has not denied this.

Then there is the undisputed evidence of Meshack that there was no attorney involved and that he had instructed the respondent directly.

[24] These facts conclusively show that the respondent lied to the court when he said that RalaweAttorneys had instructed him. By the same token he misled the court into believing that he was instructed by an attorney when he knew that Meshack had instructed him directly.

[25] It follows that Mr Fisher is mistaken when he submits that there is a bonafide dispute of fact regarding the identity of the respondent's instructing attorney. There is no dispute of fact, let alone a bona fide one. In any event, the Supreme Court of Appeal (SCA) in *Van der Berg*[2] has held that the *Plascon-Evans* rule[3] is not appropriate in proceedings to discipline a practitioner, as an applicant's role in proceedings of this kind is not that of an ordinary adversarial litigant.

[26] Aside from his dishonesty, there is no question that the respondent grossly neglected his professional duty to the court and his client; and brought the administration of justice into disrepute.He assured the court that he had sufficient funds to represent Meshack. But he failed to appear when the case was set down for trial on 29 September 2009 - on his own version not because

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2 *Van der Berg v General Council of the Bar of SA* [2007] 2 All SA 499 (SCA) para 23.

3 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 (A) at 643E-635D.

there were no funds, but because he had not prepared. Furthermore, he had no intention of appearing in court that day and even when Van der Berg requested him to come to court, the respondent simply failed to appear. And this after the trial date had been arranged with him and the State was ready to proceed with the trial. As Magistrate Marais says, the court and the witnesses were inconvenienced; the right of the accused to a speedy trial was compromised; and when witnesses eventually testify it could be many years after the fact.

[27] In addition, the respondent is guilty of unprofessional conduct for having accepted instructions directly from a member of the public. It has been affirmed by the SCA that advocacy is a referral profession, and that it is misconduct for an advocate to be counsel in a case without the intervention of an attorney.[4]

The complaint by Magistrate Van Zyl

[28] On 23 June 2009, the respondent represented MrNtenetya ("Ntenetya") before Regional Court Magistrate, Ms Elsa Van Zyl ("Magistrate Van Zyl") in Parow Regional Court 2.Ntenetya had been in custody since 19 February 2009.

[29] The respondent also informed Magistrate Van Zyl that he had been instructed by Ralawe Attorneys, and asked that the case be postponed so that he

[4] *De Freitas and Another v Society of Advocates of Natal and Another* 2001 (3) SA 750 (SCA). Van der Berg n 2 para 2.

could obtain further particulars from the State. The case was postponed to 27 July 2009.

[30] On 27 July 2009 the respondent did not appear in court. Ntenetya gave the respondent's cellphone number to the court. Thereafter the prosecutor unsuccessfully tried to contact the respondent on that number. The case was then postponed to 3 August 2009 in order for the respondent to be present at court.

[31] On 3 August 2009 the respondent did not appear. Ntenetya told the court that he had spoken to the respondent who had assured him that he would be present at court on 3 August 2009.The prosecutor again unsuccessfully tried to contact the respondent on his cellphone. The accused's father, MrTamsanquaNtenetya, informed the court that he had instructed the respondent directly without the intervention of an attorney and that he had paid the respondent to represent his son. This information was provided after the court informed MrNtenetya senior of its intention to report the respondent to the Council.

[32] The respondent has never explained his absence from court and Magistrate Van Zyl did not hear from him since his appearance in her court on 23 June 2009.

[33] The respondent does not dispute any of these facts, save to deny receiving any money from MrNtenetya senior. He states that he went to court (he does not say precisely when) but could not appear on behalf of Ntenetya as a legal aid attorney had already been appointed. This is opportunistic and contrived, apparently in response to the magistrate's statement that Ntenetyahad informed the court that he no longer wanted respondent to represent him and that he would apply for legal aid. However, there is no explanation for the respondent's failure to appear in court on 3 August 2009.

[34] For the reasons already advanced, the respondent's statement to Magistrate Van Zyl that he had been instructed by RalaweAttorneys, was untrue.

[35] As in the case of Meshack, the respondent accepted instructions without the intervention of an attorney.

The complaint by Magistrate Cupido

[36] It appears from therecord of proceedingsin the case of *S v Yakaba*in Parow Regional Court 4, that the respondent represented MrYakaba ("Yakaba") for the first time on 10 December 2008 and thereafter on numerous occasions

when the case was postponed in 2009 until his last appearance as Yakaba's counsel on 28 January 2010.

[37] The record also shows that when the case was postponed on 12 December 2008, for trial on 29 April and 30 April 2009, the respondent informed the court that he had received further particulars in the case and that financial instructions had been sorted out.

[38] However, on 29 April 2009 the case was postponed to 4 May 2009 and transferred to the backlog court.

[39] In a later appearance on 1 December 2009, the case was postponed to 28 January 2010 for trial. The date was arranged with the respondent. In his affidavit Acting Regional Court Magistrate, MrGraham Cupido ("Magistrate Cupido"), says that eight consecutive days were allocated to the trial; and that the State intended to call six witnesses and the defence, four.

[40] However, on 28 January 2010 the trial could not proceed. The respondent informed the court that he had struggled with Yakaba for financial instructions and that he had informed the court of this previously. He asked for permission to withdraw from the case.

[41] The magistrate says that he expressed his displeasure and dissatisfaction with the respondent's decision to withdraw on the day of the trial, given that the case had been set down for eight consecutive court days by prior arrangement with the respondent.

[42] The respondent however denies that his conduct in failing to advise the court timeously of his intention to withdraw is unprofessional. He says that there were discussions between him and Yakaba's mother. However, no details of these discussions are given, more specifically as regards the question whether he had been placed in funds. What is clear, however, is that when he appeared for Yakaba on 1 December 2009 and the case was postponed for trial, the respondent did not inform the magistrate that he did not have sufficient funds to conduct the trial. On the contrary, he had informed the court on a previous occasion that financial instructions had been sorted out.

[43] As in the case of *Meschack*, the trial date had been arranged with the respondent and he knew that eight consecutive days had been set down for the trial. However, on the first day of the trial he applied to withdraw as Yakaba's counsel, citing a lack of funds as the reason. His conduct prejudiced Yakaba and the other accused persons in that their right to a speedy trial was compromised. The court and the State witnesses were also inconvenienced.

The respondent's conduct was unprofessional and brought the administration of the criminal justice system into disrepute.

[44] The record also shows that when the respondent applied to withdraw from Yakaba's case on 28 January 2010, he informed the court that he was instructed by Ralawe attorneys. As already stated, this is not true.

The Ntloko complaint

[45] In her affidavit Ntloko says that her deceased daughter had an account at Capitec Bank, Phillipi, Cape Town, containing about R39 000. She needed the money for the maintenance of her daughter's minor son who lives with Ntloko and for funeral debts. In January 2010 the bank advised her to approach the Master of the High Court, Cape Town, to gain access to the money, which she did.

[46] At the Master's office a man named Thembani told her that only an attorney could withdraw the funds from the bank account. Ntloko asked him how much an attorney would cost. Thembani replied that it was a free service. Subsequently he introduced her to the respondent whom he said was an attorney.

[47] Ntloko signed a written document in terms of which she nominated the respondent as executor in the deceased's estate. On 8 January 2010 the respondent signed an undertaking and acceptance of the Master's directions. On a letterhead entitled, "Advocate TembelaniSilinga", the respondent wrote to the Master in which he said that he had been instructed by the deceased's mother to assist in the administration of the estate; and that he would comply with the Administration of Estates Act and the regulations and directives of the Master. The letter is undated but the Master apparently received it on 11 January 2010.

[48] On 11 January 2010 the Master issued a letter of authority certifying that the respondent was authorized to take control of the assets of the estate of the late ZolekaNtloko. An amount of R39 174.64 in Capitec Bank was recorded as an asset in the estate.

[49] Thereafter, Ntloko, Thembani and the respondent went to Capitec Bank in Cape Town where he opened a new bank account which he controlled. He transferred all the money into that account. He withdrew the sum of R10 000, gave it to Ntloko and toldher that she should call him when she needed more money.

[50] A week later Ntloko phoned the respondent. When she could not reach him she went to Thembani at the Master's office. He told her to wait for the respondent as he was in court. The respondent arrived later and Ntloko asked him for the rest of the money. The respondent replied that he would give her only R2 000. Ntloko protested that she had debts to pay and needed the money to support the deceased's minor son. The respondent and Thembanispoke separately. Ntloko says that the respondent returned, kneeled in front of her, and asked whether he could trust her and if she would make a case against him. She did not answer him as she did not understand what he meant. Thereafter they went to the bank where the respondent withdrew the sum of R22 000. He gave R19 000 to Ntloko and kept R3 000 for himself. She asked him why he had kept the R3 000 when she had been told that an attorney would be appointed for free by the Master. He did not answer her. He made some calculations on his hand to show costs which he had incurred. He did not give her any receipts.

[51] Ntloko says that she received only R29 000 of the deceased's money. She called the respondent many times thereafter. He refused to take her calls. She unsuccessfully tried to find out where his offices were. She went to look for him at certain places, but was told that other people were looking for him as well.

[52] Later Ntloko went to the police to lay a charge against the respondent. The police asked her to get his telephone number from the Master's office. There she saw Thembani who asked whether Ntloko was coming to see him. She told him why she was there. Thembanireplied that she was wasting her time by laying a charge against the respondent because, in Ntloko's words, "he was an important advocate and nothing would come of it". He also said that she would "get into trouble and get locked up". She heard nothing further from the police.

[53] Subsequently, on the advice of her ward councillor, Ntloko went to see Ms Andrews at Legal Resources Centre(LRC),who contacted the respondent for the balance of the money. The respondent promised to deliver a chequeto LRC the next day. He failed to do so.

[54] In the answering affidavit the respondent says that Ntloko's claim "is nothing but a bunch of lies of (*sic*)a person with highly malicious intent; that he later realized that Ntloko had him appointed the executor, in his words, "with the sole intention of withdrawing the money from Capitec bank, and not to administer the estate of her late child. She simply wanted all the money for her own selfish needs". He denies that he took more than R3 000 for his costs and says that Ntloko took all the money in bits and pieces. He goes on to say

thatwhen assisting Ntloko, his actions “were above board and regular, in consonance with the established practices as prescribed by law”.

[55] But that is not so. The Ntloko complaint plainly shows that the respondent performed the functions of an attorney without being subject to the restrictions imposed on attorneys. It also illustrates the real and substantial danger to the public when advocates handle public money, without a trust banking account for the receipt and retention of a client’s money, as required by the Attorneys Act.

[56] Unlike an attorney, the respondent, an advocate, has no trust banking account, prescribed for the protection of clients and in the public interest. No amount standing to the credit of such an account is regarded as forming part of the assets of the attorney. Neither may such amount be attached on behalf of any of the attorney’s creditors. Any shortfall in the account may in proper circumstances be recovered from the Fidelity Fund. A client who does not employ an attorney and instructs an advocate directly does not have the same protection or any protection at all.

[57] For these reasons, the SCA in *De Freitas* held that an advocate should not perform the functions of an attorney, and upheld the referral rule.[5] Cameron JA said:

> "For so long as the statutory absence of trust fund protection continues, it provides, in my view, a compelling reason in the public interest for the courts to enforce the referral rule. It follows at the very least that the first applicant, in soliciting the payment in question, acted unprofessionally and improperly and rendered himself subject to appropriate sanction by the Court."[6]

[58] Thus, there can be no question that the respondent acted unprofessionally when he accepted an instruction directly from Ntloko without the intervention of an attorney.

[59] The respondent's conduct is aggravated by the fact that he has not accounted for at least R7 000 of the money held in Capitec bank. He admits that Ms Andrews of LRC called him and that he told her that he would give Ntloko a breakdown of the costs of administering the estate. More than three years later, and despite his statement thatNtlokogave him "no opportunity to prepare reporting documents", he has not produced a single piece of paper to show that his conduct was, as he says, above board and regular.

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5 *De Freitas* n 4 para 11.
6 *De Freitas*n 4 para 14 per Cameron JA.

[60] Then there is Ntloko's evidence that she went to the police; that even before she did, the respondent asked her not to do so; that he undertook to deliver a cheque to LRC which he failed to do; and that she received only R29 000 comprising two amounts – R10 000 and R19 000. The respondent concedes that he retained R3 000. On the probabilities Ntlokocould thus not have taken all the money in bits and pieces as the respondent alleges, and the balance of some R7 000 remains unaccounted for.

[61] In all of this, the respondent's attitude to his conduct, which is indicative of a lack of honesty and integrity, is disturbing: he says that when the money in the Ntloko estate was finished, he "celebrated thinking [that he] would have her off his back".

The appropriate order

[62] Section 7(1)(d) of the Act provides that a court may suspend any person from practice as an advocate or order his name to be struck off the roll of advocates if it is satisfied that he is not a fit and proper person to continue to practise as an advocate.

[63] It will immediately be noted from the provisions s 7(1)(d) of the Act that a court has the power to suspend or disbar an advocate if it is satisfied that he is

not a fit and proper person to continue to practise. It follows that the preliminary point that the respondent has not been treated fairly because he was not subjected to a disciplinary hearing before the Council launched this application, has no merit. So too, his claim that his rights under PAJA have been infringed.

[64] In *Kekana*,[7] Hefer JA set out the proper approach to an application under s 7(1)(d) of the Act, as follows. The court first has to decide whether the alleged offending conduct has been established on a balance of probability and if so, whether the person in question is a fit and proper person to practise as an advocate. The latter finding to an extent involves a value judgment, but in essence it is an objective finding of fact and discretion does not feature. But once there is a finding that he is not a fit and proper person to practise, the court has a discretion whether to order suspension or striking-off from the roll.[8]

[65] Given the complaints outlined above, I have little hesitation in concluding that the Council has proved, on a balance of probability, that the respondent breached the duties owed to the court and his clients. He deceived and misled three courts into believing that he was instructed by Ralawe Attorneys. He knowingly concealed the truth that his clients had directly instructed him. It has also been proved that the respondent is guilty of gross non-discharge of

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7 *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA).
8 *Kekana* n 7 at 654C-E.

professional duty. He failed to appear in court to defend his clients on more than one occasion, without any or adequate explanation and after the trial dates had been arranged with him. In so doing, he disregarded the important role an advocate plays in the conduct of court cases and in the administration of justice. It has also been demonstrated that the respondent is guilty of unprofessional and improper conduct by repeatedly accepting instructions without the intervention of an attorney.

[66] The respondent's assertion that in dealing with his clients he "has conducted himself with scrupulous honesty", is simply wrong. He failed to fulfil the duties of an advocate with honesty, reliability and integrity both in relation to his duties to his clients and to the Courts. In his behaviour he brought the administration of justice and the profession into disrepute.[9]

[67] It follows that the respondent is not a fit and proper person to practise as an advocate, and the next question is whether he should be suspended or struck off the roll.

[68] Mr Fisher urged us not to make an order striking the respondent's name from the roll of advocates, because, so he submitted, the respondent had merely breached the referral rule and was guilty of contempt of court in failing to

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9 *Hayes v The Bar Council* 1981 (3) SA 1070 (ZA) at 1081A-1082D.

appear on numerous occasions in the regional court, which should have been dealt with by that court. Mr Fisher also submitted that the respondent's particular circumstances and background, more specifically the difficulties which he had to face in qualifying as an advocate, justify an order of suspension.

[69] In my view these submissions are unsound. I have empathy with the respondent who comes from a disadvantaged background and whose personal circumstances were not favourable. But equally, there are many attorneys and advocates who also rose above adverse personal circumstances, yet have not made themselves guilty of misconduct.

[70] As was stated in *Van Der Berg*, the enquiry before a court called upon to exercise its disciplinary powers in relation to advocates is not what constitutes an appropriate punishment for a past transgression, but rather what is required for the protection of the public in the future.[10]

[71] The SCA has consistently held that if a court finds dishonesty, there must be exceptional circumstances before it will order a suspension from practice instead of a removal from the roll.[11] In *Geach*[12]Nugent JA said that this does

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10 *Van Der Berg* n 2 para 50.
11 *Malan and Another v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) para 10.
12 *General Council of the Bar of South Africa v Geach and Others* 2013 (2) SA 52 (SCA).

not purport to lay down a rule of law but expresses what follows naturally from a finding of dishonesty. Once an advocate has acted dishonestly it might be inferred that the dishonesty will recur and for that reason he should ordinarily be removed from the roll, unless a court is satisfied that the circumstances of the case are such that that inference need not be drawn.[13]

[72] The particular circumstances of this case, the nature of the misconduct (which includes dishonesty), the extent to which it reflects upon the respondent's character, the absence of exceptional circumstances, the likelihood of a repetition of misconduct and the need to protect the public, impel me to the conclusion that the respondent is unworthy to remain in the ranks of the profession. His misconduct was deliberate, flagrant and serious, and shows a lack of integrity, judgment and insight.

[73] For these reasons, I consider that the only appropriate order is removal from the roll of advocates.

[74] I would make the following order:

(1) The respondent's name is struck from the roll of advocates of this Court.

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[13] *Geach*n 12para 69.

(2) The respondent is ordered to pay the applicant's costs on an attorney and client scale.

SCHIPPERSJ

I agree.Itis so ordered.

GRIESEL J

JUDGMENT BY	:	SCHIPPERS J (GRIESEL J Agrees and it is so ordered).
For the Applicant(s)	:	Adv. R LIDDELL
Instructed by	:	BISSET BOEHMKE McBLAIN Per: R OMAR 11TH Floor Triangle House 22 Riebeeck Street Cape Town
For the Respondent(s)	:	Adv. W FISHER
Instructed by	:	N ALLEN ATTORNEYS Per: MARK MEYER Suite 116, 1st Floor Hassans Parow Heights 264 Voortrekker Road Parow c/o Keith Hamblin & Co. 1st Floor, Benzal House Barrack Street, Cape Town
Date(s) of hearing	:	Friday, 18 OCTOBER 2013
Judgment delivered	:	Wednesday, 30 OCTOBER 2013