IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: 24730/2015

DATE: 4 MARCH 2016

In the matter between:

THE CAPE LAW SOCIETY Applicant

And

ARTHUR SKIBBE Respondent

J U D G M E N T

GAMBLE, J:

[1] The respondent, a 57 year old male, was admitted as an attorney in the Eastern Cape High Court, Grahamstown on 14 August 1986. After practising in that division for a couple of years he was enrolled as an attorney in this Court on 8 December 1988 and has since practised in this division. Initially the respondent practised as a professional assistant with various firms in the Peninsula before opening up his own practice in Table View on 1 May 2006. It seems to have been mainly a criminal practice.

[2] In May 2015 a client of the respondent's practice lodged a

complaint with the applicant regarding misconduct on the part of the respondent; it being alleged that he had misappropriated trust funds belonging to the client. I shall deal with this complaint in more detail shortly but point out that pursuant thereto the applicant commenced a disciplinary enquiry on 2 June 2015 by informing the respondent of the complaint. The respondent admitted the substance of the complaint and advised the applicant that he no longer practised as an attorney.

[3] Once the applicant's officials had conducted the necessary assessment of the respondent's bank accounts and in particular his trust bank statements, the applicant resolved to approach this Court for the removal of the respondent from the roll of attorneys. The application was launched on 24 December 2015 and personal service thereof was affected on the respondent on 8 January 2016. The respondent does not oppose the application.

[4] The approach in a matter such as this is now settled law. In Summerley v Law Society, Northern Provinces, 2006 (5) SA 613 (SCA) it was noted that in considering such an application the Court is required to apply the provisions of section 22(1)(d) of the Attorneys Act 53 of 1979 ("The Act"). Application of that section said Brand, JA involves a threefold

enquiry by the Court. Firstly, the Court must determine whether the Law Society has established the alleged misconduct complained of on a balance of probabilities. Secondly, the Court must be satisfied in the light of the misconduct so established, that the attorney concerned is not a fit and proper person to continue practising as such. This determination requires the Court to exercise a discretion.

Finally, the Court must exercise a further discretion, namely, whether the person, who has been found not to be fit and proper to practise as an attorney, should face the ultimate sanction of being struck from the roll of attorneys or whether an order of suspension from practice or some other sanction will suffice.

[5] Turning to the first enquiry, the facts are fairly straightforward. In 2013 a certain Mr Hoffman instructed the respondent to represent him in a dispute in which he was engaged with Engen Petroleum. In anticipation of having to pay a sum of money to Engen, Mr Hoffman deposited the sum of R740 169.63 in the attorney's trust account on 2 October 2013. The dispute was resolved on 17 May 2015 and Mr Hoffman requested the respondent to release the funds which had been deposited into his trust account. In an affidavit placed before the Court Mr Hoffman said that the respondent

informed him that he did not have the entire amount in his trust account any longer claiming that he had been “irresponsible with his trust account”.

[6] The respondent immediately deposited the amount of R502 988.26 into Mr Hoffman’s bank account leaving a shortfall of R237 181.37 plus interest. Mr Hoffman laid a charge of theft with the Table View police on 22 May 2015 in respect of this amount.

[7] On 19 May 2015 the respondent communicated with Mr Hoffman by email. He informed him of the shortfall in his trust account and apologised profusely for what he had done, saying that he would pay back the balance due if it was the last thing he did on earth. The respondent informed Mr Hoffman that because his trust account was in a mess he was obliged to close his practice immediately. He went on to say that he did not have the heart to speak face to face but that he would meet Mr Hoffman within a day or two to discuss how he was going to repay the outstanding amount.

[8] In July 2015 officials from the applicant endeavoured to meet with the respondent to verify the facts arising from the complaint. Having initially agreed to meet the respondent then proceeded to give the officials the run-around and only went so

far as dropping copies of bank statements (trust and business accounts) with the applicant. The applicant has referred the Court to the relevant entries in those accounts which reflect the movement of money back and forth. The shortfall complaint by Mr Hoffman is evident from the applicant's analysis of the trust account.

[9] In the circumstances, I am satisfied that the applicant has established on a balance of probabilities the misconduct complained of namely, the misappropriation of trust monies.

[10] The Court must now ask itself whether that conduct on the part of the respondent is such that he should no longer be regarded as a fit and proper person to practise as an attorney. In Summerley Brand, JA observed at para 21 that:

> "The attorneys' profession is an honourable profession which demands complete honesty and integrity from its members."

His Lordship went on to agree with the submission made on behalf of the Law Society in that matter that as a general rule the striking off of an attorney is reserved for those members of the profession who have acted dishonestly. After all, one must not lose sight of the fact that the misappropriation of trust

monies is tantamount to theft (Law Society Cape v Koch 1985 (4) SA 379 (C) at 382D). By immediately closing his practise when the complaint by Mr Hoffman surfaced, the respondent has in effect acknowledged the consequences of his misconduct.

[11] In contextualising his conduct the applicant says that he has a gambling addiction, coupled with a drinking problem. He says that the latter fuels the former and he suggests that the bulk of the misappropriated money (95%) was spent on horseracing and slot machines. The remainder says the respondent was "*applied towards general expenses including the purchase of alcohol*". The respondent is to be commended for his frankness and honesty in acknowledging his shortcomings. He has done the right thing by admitting his misconduct by immediately closing his practise (thereby eliminating the potential exposure of other clients to the consequences of his addictions) and by undertaking to repay Mr Hoffman, but in light of the fact that his misconduct is in the form of dishonesty of the most serious kind, there cannot be any debate as to the respondent's unsuitability to practise as an attorney any longer. In Law Society of the Cape of Good Hope v Budricks 2003 (2) SA 582 at 587d-e Hefer, AP described the misappropriation of trust funds as "*about the worst professional sin that an attorney can commit*". There is

concern too on the part of this Court that the respondent, while acknowledging his addictions, has evidently taken no steps to enter into rehabilitation. Having regard to all of these circumstances I am satisfied that the respondent is no longer a fit and proper person to practise as an attorney.

[12] Ordinarily as Brand, JA pointed out in Summerley, the consequences of such a finding in the context of conduct rooted in dishonesty or that such a person is likely to be struck off the roll of practitioners, while in Cape Law Society v Parker 2000 (1) SA 582 (C) at 587E King, JP observed that:

> "It is clear on authority that the usual penalty for misappropriation of trust monies is striking off and this is understandably so. The proper administration of monies entrusted to an attorney by his client is perhaps the most fundamental and important of the duties of an attorney and anything less than complete observation of those duties will not be tolerated by the Courts."

[13] To be sure that sanction is harsh not only does the individual suffer the ignominy of being struck off the roll of professional practitioners, he will also be precluded from pursuing his chosen profession for a substantial period of time

and so when considering such a severe penalty, the Court must be satisfied that the lesser stricture of suspension from practise or a direction that the attorney in question should practise under supervision will not achieve the objectives of this Court's supervisory powers over the conduct of attorneys. The object of the Court's sanction is twofold – errant attorneys must be disciplined and punished but equally important is the consideration the public must enjoy full protection against unscrupulous practitioners where trust monies are involved.

[14] In this manner the respondent has not approached the Court for any lesser form of sanction. Rather, he has acknowledged that he should not be in practise any longer. While the absence of any request for a lesser sanction and striking off is a factor for overall consideration in relation to the third criteria for an order of striking off under the Act, it does not absolve the Court hearing the matter from considering whether a lesser sanction might be imposed. On that score what weighs heavily against the respondent in this matter is the very core of his problem – addiction, given that he has a compulsive condition which has to be funded with substantial sums of money and given that that condition persists, the Court would be erring in its duty towards the public if it did not make an order which would effectively keep the respondent well away from access to any such funds.

Further, regard must be had to the fact that the sum misappropriated is not insubstantial and that no proposal for its repayment has been forthcoming from the respondent.

[15] In the circumstances I am of the view that a proper case has been made out for the name of the respondent to be struck from the roll of attorneys. As to costs, it is customary in matters of this sort to ensure that the voluntary association which is applied for the striking off in the public interest is not out of pocket and for that reason costs are usually awarded on the attorney and client scale. Accordingly, the following order is made:

(a) **THE NAME OF ARTHUR SKIBBE IS TO BE STRUCK OFF THE ROLL OF ATTORNEYS OF THIS COURT.**

(b) **IT IS FURTHER ORDERED IN TERMS OF PARAGRAPHS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 AND 13 OF THE NOTICE OF MOTION.**

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GAMBLE, J